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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 307

MABEL V. ROMAN, Clerk of the Peace for New Castle County; WALTER A. HANDSBERRY, Clerk of the Peace for Kent County; I. ROBERT WILLEY, Clerk of the Peace for Sussex County; *et als.*, *Appellants*,

v.

RICHARD SINCOCK, *et als.*

On Appeal from the United States District Court for the District of Delaware

RECORD APPENDIX TO BRIEF FOR THE APPELLANTS

[Cited as "Del. App."]

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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1. Opinion of the Supreme Court of Delaware, May 6, 1963

Opinion of the Justices of the Supreme Court in Response to Questions Propounded by the Governor of Delaware.

To His Excellency Elbert N. Carvel,
Governor of Delaware:

Receipt is acknowledged of your letter of April 22, 1963, requesting the opinion of the members of this Court upon two questions therein set forth.

These questions concern the provisions of the recent amendment to Article II of the Constitution of Delaware,

effective January 17, 1963, relating to the composition of the houses of the General Assembly of the State.

Section 5 of the amendatory act adds to Section 2 of Article II a new Section 2A. This new Section 2A creates additional representative districts. Any existing district with a population in excess of 15,000 is entitled to an additional Representative for each additional 15,000 of population or major fraction thereof. Each such representative district is to be subdivided into new districts from which the representatives shall respectively be chosen. The redistricting is to be done after each federal decennial census.

The task of subdividing the districts is to be done by a Redistricting Commission consisting of the Governor and the State Chairmen of the two principal political parties.

It is next provided as follows:

> "Within 120 calendar days following the official reporting to the President of the United States of each decennial census, (or within 120 calendar days after this amendment takes effect) the Governor, on behalf of the Commission, shall file with the Secretary of State the plan for redistricting and reapportioning as provided for herein. Forthwith, after the filing, the Governor shall issue a proclamation of redistricting and reapportioning. The Secretary of State shall cause such proclamation to be published in two newspapers of general circulation within the State for two consecutive weeks, within 20 days after the issuance of the proclamation. The proclamation shall become effective within 30 days of its issuance."

We understand the fact to be that as of the date of your letter you had not, on behalf of the Redistricting Commission, filed with the Secretary of State the required plan, which, we are informed, had not then been agreed to. The period of 120 calendar days prescribed by the statute will expire May 16, 1963.

On April 17, 1963, the United States District Court for the District of Delaware filed an opinion in the case of *Richard Sincock, et al., Plaintiffs, v. William Duffy, Jr., et al., Defendants*, Civil Action No. 2470, holding that the provisions of Section 2 of Article II of the Constitution of the State of Delaware, as originally set forth in the Constitution of 1897, and as amended by the act of January 17, 1963, are unconstitutional under the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

In the light of the foregoing, you ask the following questions:

> "1. Is the Governor required to issue a proclamation of redistricting and reapportioning pursuant to Section 2, Article II, Constitution of the State of Delaware, on or before May 17, 1963, assuming the status of this case remains the same on May 17, 1963, as it is on this date?
>
> "2. Are there any reasonably foreseeable events which might occur prior to May 17, 1963, which would reverse such opinion as you render on Question 1, such as the issuance of a final decree by the United States District Court, motion for reargument before said District Court, an appeal to the United States Supreme Court?

Since the date of your letter the District Court has entered a judgment in the case above referred to. A copy of that judgment is enclosed.

The judgment is a declaratory judgment, and no other relief is as yet granted to the plaintiffs. In particular, no injunction has been granted, although the court has reserved jurisdiction to do so hereafter if it shall deem such relief necessary and proper.

The first question you have posed is based upon the assumption that the status of the case in the District Court

remains the same on May 17. Since the status of the case has been changed by the entry of judgment, your first question is moot.

The second question concerns, in effect, the duty of the Governor under the new Section 2A of Article II of the Constitution in respect of the filing and promulgation of the redistricting plan referred to in the Section. In the light of the decision of the Federal District Court in the *Sincock* case, should the Governor take the steps contemplated by Section 2A, or should he treat the section as completely void and of no effect?

It is apparent from the judgment itself that the case is not finally disposed of. By paragraph 3 all pending motions are held in abeyance. Moreover, the judgment cannot be regarded as final, for the present purpose, because an appeal may be taken within the time allowed for the purpose, and it is possible that the judgment may be reversed or modified. Until the time for appeal has passed, therefore, it cannot be said that the judgment is final for all purposes. Compare *Steiner v. Simmons*, 35 Del.Ch. 83, 89.

Finally, no injunctive relief has been granted, as above noted.

In these circumstances, particularly since the Governor is not a party to the suit in the District Court, we are of opinion that it is the duty of the Governor to obey the mandate of Section 2A and to proceed with the steps therein set forth.

We venture to add, however, a suggestion with respect to the proclamation contemplated by Section 2A. If and when it is issued, it should, we think, make specific reference to the holding of the Federal District Court, and to the serious doubt as to validity that must attend any further stops under Section 2A. Such a course seems

to us to be desirable for the information of the citizens of the State, and also as a seemly manifestation of regard for the decision of the District Court of the United States for the District of Delaware.

Respectfully submitted,

s/ CLARENCE A. SOUTHERLAND
Chief Justice
s/ DANIEL F. WOLCOTT
Associate Justice
s/ CHARLES L. TERRY, JR.
Associate Justice

May 6, 1963.

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2. Proclamation of the Governor of Delaware, May 17, 1963

STATE OF DELAWARE

[STATE ARMS]

EXECUTIVE DEPARTMENT

PROCLAMATION

WHEREAS, an amendment to Section 2, Article II of the Constitution of the State of Delaware became effective January 17, 1963; and

WHEREAS, said amendment provides that the Governor shall, within 120 calendar days after the effective date of said amendment, file a plan for redistricting and reapportioning with the Secretary of State and shall forthwith issue a proclamation of redistricting and reapportioning; and

WHEREAS, the United States District Court for Delaware has declared said constitutional amendment to be in conflict with the Constitution of the United States of America and therefore null and void; and

WHEREAS, the Supreme Court of the State of Delaware has advised the Governor that the decision of the United States District Court is not final until the deadline for appeal has passed, and further advised that the Governor should in the meantime carry out the provisions of Section 2, Article II of the Constitution of the State of Delaware:

NOW, THEREFORE, I, Elbert N. Carvel, Governor of the State of Delaware, do hereby proclaim a plan of redistricting and reapportioning as follows:

1. The *Second Representative District* of New Castle County is hereby divided into two new Representative Districts as follows:

District "A" shall consist of all that portion of the said Second Representative District north of a line beginning at the intersection of the northwestern boundary of the City of Wilmington and the center line of Concord Avenue, thence southeasterly along the center line of Concord Avenue to its intersection with the center line of Twenty-third Street, thence easterly along the center line of Twenty-third Street and its center line extended to the Delaware River.

District "B" shall consist of all that portion of the said Second Representative District not included in District "A".

2. The *Fifth Representative District* of New Castle County is hereby divided into two new Representative Districts as follows:

District "A" shall consist of all that portion of the said Fifth Representative District east of a line beginning at the intersection of the center line of Eighth Street and the center line of Clayton Street, thence southerly along the center line of Clayton Street to its intersection with the southern boundary of the City of Wilmington.

District "B" shall consist of all that portion of the said Fifth Representative District not included in District "A".

3. The *Sixth Representative District* of New Castle County is hereby divided into four new Representative Districts as follows:

District "A" shall consist of all that portion of the said Sixth Representative District bounded by a line beginning at the intersection of the Delaware River and the northern boundary of the State of Delaware, thence along the boundary of the State of Delaware to its intersection with the center line of the Baltimore and Ohio Railroad right-of-way, thence southwesterly along the center line of the Baltimore and Ohio Railroad right-of-way to its intersection with the center line of Silverside Road, thence easterly along the center line of Silverside Road to its intersection with the center line of Holly Oak Road, thence easterly along the center line of Holly Oak Road and its center line extended to its intersection with the Delaware River, thence northeasterly along the Delaware River to the point of the beginning.

District "B" shall consist of all that portion of the said Sixth Representative District east of the center line of the Baltimore and Ohio Railroad right-of-way and not included in District "A".

District "C" shall consist of all that portion of the said Sixth Representative District east of a line beginning at the intersection of the center line of Concord Pike and the boundary of the City of Wilmington, thence northerly along the center line of Concord Pike to its intersection with the center line of Foulk Road, thence northeasterly along the center line of Foulk Road to its intersection with the northern boundary of the State of Delaware, and not included in Districts "A" and "B".

District "D" shall consist of all that portion of the said Sixth Representative District not included in Districts "A", "B" and "C".

4. The *Seventh Representative District* of New Castle County is hereby divided into three new Representative Districts as follows:

District "A" shall consist of all that portion of the said Seventh Representative District north of a line beginning at the intersection of the center line of the Lancaster Turnpike and the center line of North duPont Road, thence southerly along the center line of North duPont Road to its intersection with the center line of Faulkland Road, thence westerly along the center line of Faulkland Road to its intersection with Chestnut Run, thence southerly along the course of Chestnut Run to its intersection with the center line of the Kirkwood Highway, thence westerly along the center line of the Kirkwood Highway to its intersection with the Red Clay Creek.

District "B" shall consist of all that portion of the said Seventh Representative District south of a line beginning at the intersection of the center line of Maryland Avenue and the southern boundary of the City of Wilmington, thence southwesterly along the center line of Maryland Avenue to its intersection with the center line of Boxwood Road, thence westerly along the center line of Boxwood Road to its intersection with the center line of Dodson Avenue, thence along the center line of Dodson Avenue and its center line extended to its intersection with the center line of the Baltimore and Ohio Railroad right-of-way, thence easterly along the center line of the Baltimore and Ohio Railroad right-of-way to its intersection with the western boundary of the Town of Elsmere, thence northerly along the boundary of the Town of Elsmere to its intersection with the center line of the Kirkwood Highway, thence westerly along the center line of the Kirkwood Highway to its intersection with the Red Clay Creek.

District "C" shall consist of all that portion of the said Seventh Representative District not included in Districts "A" and "B".

5. The *Eighth Representative District* of New Castle County shall be divided into two new Representative Districts as follows:

District "A" shall consist of all that portion of the said Eighth Representative District bounded by a line beginning at the intersection of the Red Clay Creek and the center line of Faulkland Road, thence westerly along the center line of Faulkland Road to its inter-

section with the center line of Duncan Road, thence southerly along the center line of Duncan Road to its intersection with the centerline of Milltown Road, thence westerly along the center line of Milltown Road to its intersection with the center line of Limestone Road, thence northerly along the center line of Limestone Road to its intersection with Mill Creek, thence southerly along the course of Mill Creek to its junction with White Clay Creek, thence easterly along the course of the White Clay Creek to its junction with the Red Clay Creek, thence northerly along the course of the Red Clay Creek to the point of the beginning.

District "B" shall consist of all that portion of the said Eighth Representative District not included in District "A".

6. The *Tenth Representative District* of New Castle County shall be divided into three new Representative Districts as follows:

District "A" shall consist of all that portion of the said Tenth Representative District south of a line beginning at the intersection of the center line of Blue Hen Road extended and the Delaware River, thence westerly along said extended center line of Blue Hen Road to its intersection with the center line of New Castle Avenue, thence southerly along the center line of New Castle Avenue to its intersection with the boundary of the Town of New Castle, thence south and westerly along the boundary of the Town of New Castle to its intersection with the center line of Basin Road, thence northwesterly along the center line of Basin Road to its intersection with the Christiana River.

District "B" shall consist of all that portion of the said Tenth Representative District bounded by a line beginning at the intersection of the center line of Landers Lane and the center line of New Castle Avenue, thence southerly along the center line of New Castle Avenue to its intersection with the boundary of the Town of New Castle, thence south and westerly along the boundary of the Town of New Castle to its intersection with the center line of Basin Road, thence northwesterly along the center line of Basin Road to its intersection with the Christiana River, thence northeasterly along the course of the Christiana River to its interseetion with the southern boundary of the City

of Wilmington, thence easterly along the southern boundary of the City of Wilmington to its intersection with the center line of South Market Street, thence southerly along the center line of South Market Street to its intersection with the center line of the duPont Boulevard, thence southwesterly along the center line of the duPont Boulevard to its intersection with the center line of the Road (Route 40) leading to the Delaware Memorial Bridge, thence easterly along the center line of said Road (Route 40) leading to the Delaware Memorial Bridge to its intersection with the center line of Landers Lane, thence southeasterly along the center line of Landers Lane to its intersection with the center line of Linstone Avenue, thence southeasterly along the center line of Linstone Avenue to its intersection with the center line of Glen Avenue, thence southwesterly along the center line of Glen Avenue to its intersection with the property line of the Colwyck Junior High School, thence easterly along the property line of said school to its intersection with the center line of Landers Lane, thence southeasterly along the center line of Landers Lane to its intersection with the center line of New Castle Avenue, the point of the beginning.

District "C" shall consist of all that portion of the said Tenth Representative District not included in Districts "A" and "B".

IN WITNESS WHEREOF, I Elbert N. Carvel, Governor of the State of Delaware, have hereunto set my hand and caused the Great Seal of the said State to be hereunto affixed at Dover this Seventeenth Day of May in the year of our Lord, One Thousand Nine Hundred and Sixty-three, and of the Independence of the United States of America, the One Hundred and Eighty-seventh.

/s/ ELBERT N. CARVEL
Governor

/s/ ELISHA C. DUKES
Secretary of State

3. Excerpts from the Transcript of Testimony

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Civil Action No. 2470

RICHARD SINCOCK, et al., *Plaintiffs*

v.

WILLIAM DUFFY, JR., et al., *Defendants*

Wilmington, Delaware,
January 21, 1963

Before:

HON. JOHN BIGGS, JR., Chief Judge, Third Circuit Court of Appeals.

HON. CALEB M. WRIGHT, Chief Judge, U.S. District Court for the District of Delaware.

HON. CALEB R. LAYTON, U.S. District Court Judge.

APPEARANCES:

VINCENT A. THEISEN, ESQ. and VICTOR F. BATTAGLIA, ESQ., For the Plaintiffs.

DAVID P. BUCKSON, ESQ., Attorney General;
WARREN B. BURT, ESQ. and NORMAN A. VEASEY, ESQ., Deputies Attorney General; and
JANUAR D. BOVE, JR., ESQ., Former Attorney General, For the State Election Commissioner, the Department of Elections for Sussex County, the Clerk of the Peace for Sussex County, the Superior Court Judges and the Chancellor of the State of Delaware.

FRANK O'DONNELL, ESQ.,
For the Department of Elections for New Castle County and the Clerk of the Peace for New Castle County.

JAMES H. HUGHES, III, ESQ.,
For the Department of Elections for Kent County.

N. MAXSON TERRY, ESQ.,
For the Clerk of the Peace for Kent County.

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447 **Leon de Valinger, Jr.**

called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HUGHES:

Q. What is your occupation? A. I am the State Archivist of the State of Delaware.

Q. Does that involve you in matters pertaining to the history of Delaware? A. Yes, it does.

448 Q. How long have you maintained an interest in the history of Delaware? A. Since my undergraduate days at the University of Delaware.

Q. What have been your studies pertaining to the history of our State? A. I have specialized in local government, military development in the colonial period, the publishing of local county records, among others.

Q. Did you receive a degree from the University of Delaware? A. Yes.

Q. Was it an A.B.? A. An A.B., and an M.A. in 1935.

Q. What was your field of study as an undergraduate at the University of Delaware? A. I majored in history.

Q. What was your thesis for your Master's Degree? A. "The Development of Local Government in Delaware, 1638 to 1680."

Q. After your graduation and academic work what was your occupation, what did you do from then on? A. I was

employed as the Assistant Archivist from December 15 of 1930 on.

Q. When did you become the Archivist of the
449 State? A. In October of 1941.

Q. Have you continued to hold that position until the present time? A. Yes, I have. My duties have been enlarged.

JUDGE BIGGS: Can you hear him?

MR. BOVE: Yes.

MR. O'DONNELL: Yes.

JUDGE BIGGS: Thank you.

BY MR. HUGHES:

Q. Mr. de Valinger, have you written articles, books, publications of any kind relating to the history of Delaware? A. Yes, I have.

Q. Are there many of your publications of that sort? A. I provided you with a five-page bibliography.

Q. Yes. Would you mention some of those, the chief ones that have to do with the history of our State, and in particular with the development of local government in it? A. My Master's thesis on the development of local government in Delaware is one of them. I edited the Court records of Kent County for the early part of the colonial period, 1680 to 1705.

Q. If I may, your Master's thesis was in 1935? A. 1935.

Q. Did you publish an account of the military
450 organization in Delaware during colonial times? A. Yes. That was in 1938, as I recall.

Q. That covered the period from 1638 to 1776? A. Yes.

Q. Then you mentioned the calendar of the Kent County, Delaware— A. Probate records.

Q. The probate records. That was compiled by you when, in 1944? A. Yes, I believe so.

* * * * * * * * * *

Q. Did you edit the Council of Safety minutes, 1775 to 1776, which was published in the Delaware history pub-

lished by the Historical Society of Delaware in 1946? A. Yes, I did.

Q. Have you edited the Rodney letters, and the Ridgely letters? A. Might I say yes, with the explanation
451 that the Rodney letters were supplemental to those previously edited by Dr. George S. Ryden.

Q. What would the subjects revealed in the Rodney and Ridgely letters be? A. The Rodney letters are largely from the Revolutionary period, and they would relate to military activities as well as governmental activities of our State at that period, whereas the Ridgely letters are most important for social, economic developments in our State for the period 1742 to 1898. The latter was a three-volume work.

Q. Did you compile a reconstructed 1790 census of Delaware, published by the National Genealogical Society Quarterly? A. Yes, I did.

Q. In 1948? A. That was based on the original assessment and tax lists of the Hundreds of the counties, because the original 1790 census for our State is not extant.

Q. Were you an editor of the publication of the debates and proceedings of the Constitutional Convention of 1896? A. Yes, I was in charge, with the responsibility for the editing and publishing of that five-volume work.

Q. I think you have recently published, or you have been the editor and publisher of a publication called
452 "Historic Houses and Buildings of Delaware"? A. That is right.

Q. In the course of your occupation as Archivist do you have the responsibility for the original records of the State of Delaware from the beginning? A. Yes. State and its political sub-divisions.

Q. All that are available. Is that correct? A. That is right.

Q. Is it correct to say that you have personally examined and studied all of those records that are available? A. May I qualify that?

Q. Yes. A. I say that I have seen most of them, the ones that have come into our custody, and particularly in the earlier year, the records of the earlier years. Some of the more recent records I have not personally seen and studied.

Q. I wanted to ask you whether you were familiar with the original sources as well as the historical publications? A. Yes, I am.

Q. Mr. de Valinger, what was the beginning of the counties, the origin of the counties of what is now the State of Delaware? A. I believe, as I have set forth in my Master's thesis, that the origin in Delaware of the
453 counties had its inception in the Dutch Judicial Districts, and that they were administered by the Schepens or the equivalent of our magistrates. They were assisted by the fiscal Schout or the equivalent of our sheriffs, and that that was carried over into the Duke of York period. The duties were practically the same, but the English titles of magistrate and sheriff were applied; and then from there they proceeded into the William Penn period.

Q. I didn't hear that last part. A. From the Duke of York period there was a transition into the William Penn period.

Q. When were the Dutch Judicial Districts created and established? A. 1673, in the brief interval they regained occupation.

Q. In the brief interval that the Dutch had— A. Regained occupation.

Q. Reoccupied, yes. When did the Duke of York acquire proprietorship? A. 1664.

Q. So then after the Dutch establishment of these judicial districts did you say that the Duke of York continued them? A. They were perpetuated.

454 Q. What were those judicial districts, Mr. de Valinger? A. The principal one was at New Castle,

the other at Upland, and the third at Whorekill, which we now know as Sussex.

Q. Upland was Chester, which is now Delaware County? A. Yes.

Q. So that there were two in what is now Delaware? A. That is right.

Q. When did William Penn acquire title or ownership of these counties? A. By deed *fiefment* from the Duke of York to William Penn, March 22, 1682.

Q. And what were the counties at that time? A. The names of the counties?

Q. Yes. A. The names of the counties were New Castle and Whorekill.

Q. They were still just two in what is now Delaware? A. Excuse me, I am wrong. I had forgotten the change in the Duke of York period. In 1680 the people of the community now known as Dover petitioned for the erection of a new county and it was named St. Jones County. Then in the William Penn period those three counties were joined by the act*ive* [of] Union to the province of
455 Pennsylvania as territories, and in 1683 William Penn renamed the two lower ones. St. Jones County became Kent County and the earlier Whorekill County which under the Duke of York period had been named Deal County then became Sussex. They were named for home counties in England.

Q. From 1680 on have the three counties on the Delaware remained the same? A. Yes, they have.

Q. In name and geographical area? A. From 1683.

Q. Was there a particular reason given for the creation of the third county in the middle of what is now a State? A. Yes, indeed. The petition set forth that because of the distances and the inconvenience and the hazards of crossing water courses and of going to Lewes to transact business it would be much more convenient for the people of the upper part of the Whorekill County to have it erected into a new county known as St. Jones and subsequently Kent.

Q. Under William Penn were there any further developments in the county government set up in what is now Delaware? A. Yes, there were considerable.

Q. What did they consist of? A. The county structure flourished. More of the officers or officials from the English County system came into being. You find overseers
456 of the highways, overseers of the roads, the tax collectors, you see the court system flourishing, and many aspects of that type. You also see the introduction of the Hundred system under William Penn.

Q. What about legislative assemblies, Mr. de Valinger? A. It certainly flourished, because you find an elective assembly coming into being. You also find the council coming into being under William Penn.

Q. An elected assembly? A. An elected assembly.

Q. What was the representational apportionment of that assembly? A. It did vary from time to time, but generally and for the most part it was six, I believe, from each of the counties.

Q. You mean it varied in number? A. It did in the early stages.

Q. Did it vary in proportions or ratios or percentages? A. To my knowledge there were no proportions or ratios. It was a strict county basis.

Q. Each county was represented equally from the time of William Penn? A. Yes.

457 Q. For how long? A. From then until the Revolution, July 4, 1776.

Q. That legislative assembly at the beginning was in connection with the province of Pennsylvania, was it not, Mr. de Valinger? A. In connection?

Q. Yes. Didn't they meet together at first? A. Yes, they met together in what was known as the General Assembly.

Q. How did the three lower counties on the Delaware become separated from the province of Pennsylvania? A. There was a long series of grievances that developed, and

as a result of these grievances the Act of—rather the Charter of Privileges of 1701 enabled the three lower counties to become separated and hold their own assembly at New Castle, and that was effectuated in 1704.

Q. This Charter of Privileges of 1701, who granted it? A. William Penn, the proprietor.

Q. From 1704 on did the three lower counties remain separate from the province? A. As far as their assembly was concerned.

Q. But continued to have the same Governor? A. Yes, indeed. Frequently the Deputy Governor presided.

458 Q. This continued, did you testify, up until the time of the Revolution? A. Yes.

Q. When the troubles began that led to the American Revolution what position did the three lower counties on the Delaware take? A. What position did they take?

Q. Yes. A. With regard to the Revolution?

Q. Yes, or what did they do? Did they participate in the Continental Congress? A. Yes, they had representatives as counties in the early Continental Congress.

Q. Did they instruct those delegates as to any position to take or how were the delegates instructed, if they were? A. Well, from time to time the issues involved would carry particular instructions, but they were from the earliest times instructed not to abrogate any of their representative rights.

Q. How many representatives were there from the counties in the Continental Congress? A. They varied, but usually we found there would be one or two and in

459 some instances all three counties could not attend.

By Judge Biggs:

Q. One or two from each county? A. Yes, sir.

By Mr. Hughes:

Q. That is what I was getting at. There would be a representative or representatives from each county? A. Yes, sir, strictly on a county basis.

By Judge Biggs:

Q. How were they selected? A. They would be selected by the Assembly that would instruct them.

Q. That is, the Delaware Assembly? A. The Delaware Assembly at New Castle.

Q. Would select individuals or delegates or whatever you call them to go to the national group or—I suppose indirectly that is a wrong statement—the federated group? A. Yes.

By Judge Wright:

Q. But when they went there they were not representatives of the three lower counties on the Delaware; they were representatives of the individual counties? A. Yes, sir.

460 By Judge Biggs:

Q. And of the State as well? A. Well, could I correct you there? They were not at that time a State.

Q. What was the situation that statewide, if I can use that term? The State had not yet been created. A. Prior to July 4 of 1776 they were still individual counties who were agreeing on these things. There was no formal organization.

Q. There was no sovereignty in the three counties? A. There was no sovereignty. They would term themselves as counties on the Delaware.

Q. They were known as the three lower counties on the Delaware; is that correct? A. Yes.

Judge Biggs: Thank you.

Mr. Bove: Your Honor said there was no sovereignty in the three counties, and I am not sure Mr. de Valinger understood.

By Judge Biggs:

Q. I said there was no sovereignty in the three counties and was that correct, and you said yes. A. I should not have said that.

Q. What would you say the answer should be? There was some sovereignty? and my question is
461 State sovereignty. A. Sovereignty would be a residual in each of the counties.

There was a Colonial Governor or a Deputy Governor? A. Yes.

Q. When the Assembly passed laws they had to be approved? A. That is true.

Q. By the Governor or the Deputy Governor? A. That is true.

Q. Was there a power of veto? A. Yes, the Governor had the power of veto.

Q. Or the Deputy Governor? A. Yes.

Q. But if he approved they became the law of the three lower counties? A. Yes, sir.

Q. You say there was a General Assembly or they met in a General Assembly? A. They had prior to their own Assembly.

Q. Prior to their own Assembly? What was the situation there? Did the General Assembly legislate for Delaware, the three lower counties? A. Yes, the repre-
462 sentatives from the three lower counties meeting with the representatives or some, I should say, from the three Pennsylvania counties of Philadelphia, Chester, and Bucks would comprise the General Assembly when the Council was in session also.

Q. Did you know as a matter of general interest that the Virgin Islands followed that proceeding until very recently? A. No, sir.

By Mr. Hughes:

Q. When you speak of the sovereignty of the counties prior to the Declaration of Independence they were colonies of Great Britain, were they not? A. I wouldn't say so. There was one time when they attempted to be colonies. They petitioned in Queen *Ann's* period, but they did not actually become that. They were proprietary holdings of William Penn.

By Judge Biggs:

Q. They could not even attain colony status? A. They had a little—well, in a way they were better off, because the laws that they enacted were subject to the approval or disapproval of the proprietor, and he was required to transmit the laws, but frequently they were never transmitted to England and they were enforced until it was brought to the attention of the authorities of the
463 Lords of Trade and Plantation and others that such a law was in effect, and by the time they would void a law of that type the Assembly would re-enact it, so that it might be three or four years that they would be perpetuating a law that had been disapproved.

By Mr. Hughes:

Q. Mr. de Valinger, what I meant to get at is you would not say that they were sovereign before the Declaration of Independence? A. Well, when I said that they were I was thinking in terms that they were able to legislate in their own behalf, in their own Assembly at New Castle. I was thinking in that term.

Q. Now, the three counties participated together in the resolution that resulted in the Declaration of Independence? A. Yes, they did.

* * * * * * * * * * *

464 Q. Mr. de Valinger, my attention has been called to my omission to ask you in developing your qualifications about your memberships in professional societies or organizations. Have you taken part in such organizations directed towards an interest in the history and the kind of thing we have been discussing? A. Yes, indeed.

Q. What are they, Mr. de Valinger? A. I am a
465 member and director of the Historical Society of Delaware, a member of the Historical Society of Pennsylvania, and a number of smaller ones. I am a founder member of the Society of American Archivists and at present their president.

Q. These historical societies, do they sponsor publications or published periodicals? A. Yes.

Q. And is it to those periodicals that you frequently contribute your writings? A. That is right. The Historical Society of Delaware publishes "Delaware History". The Historical Society of Pennsylvania publishes the magazine of History and Biography.

Q. Now, before we suspend for lunch I think we had gotten almost up to the Declaration of Independence, Mr. de Valinger. A. Yes.

Q. I think you had testified about Delaware or the three lower counties' participation in the Continental Congress? A. That is right.

Q. What was that, Mr. de Valinger? A. They were in attendance as representatives of their counties.

466 Q. From time to time delegations from each county— A. From each county.

Q. And they participated in the debates and resolutions leading up to the Declaration of Independence? A. Yes.

Q. When that was adopted they voted there as a unit, didn't they? A. When you say "there", you mean—

Q. On the Declaration of Independence. A. We had three delegates in the Continental Congress at that time, George Read, Thomas McKean and Caesar Rodney. Thomas McKean was in favor of Lee's resolution for the Declaration. Rodney had gone to the lower part of the State as he was the equivalent of Adjutant General of the State Militia at that time supposedly to help put down a Tory rebellion. He had returned to his estate outside of Dover, and Mr. Thomas McKean's messenger reached him urging him to come to Philadelphia because George Read was opposed to Lee's resolution. So the two men in Continental Congress at that time were divided. As you will recall from our history, Caesar Rodney made his famous ride from Dover to Philadelphia and arrived in the afternoon of July 2 and voted with McKean in favor of the resolution.

Q. So that that was an act of the three counties,
467 the three lower counties, as a State, you might say?
A. I couldn't say as a State because they weren't at that time.

Q. They still were not organized as a State? A. No, they were not organized. There was no formal organization making them a State. It must have been a mutual agreement among them.

Q. And upon the Declaration of Independence the ties with England then were severed? A. They were severed.

Q. When did the three lower counties organize thmselves into a State? A. In the fall of 1776 they had a constitutional convention, and the basis of that constitutional convention was thirty delegates, ten from each county. The General Assembly meeting at New Castle provided for the election of these delegates from each of the counties.

Q. During the period between July 4, 1776 and the fall, when the constitutional convention met, what was the government of the counties on the Delaware? A. The Assembly of the three counties.

Q. They continued the former system or the system that had existed under William Penn? A. Exactly. The only substitution was omitting the name of the king and
468 inserting the three lower counties.

Q. In the fall of 1776 you say they did adopt a convention, is that true? A. A constitution.

Q. A constitution. What did I say?

JUDGE BIGGS: Convention.

MR. HUGHES: Excuse me.

BY MR. HUGHES:

Q. What did the Constitution of 1776 provide with respect to legislative assembly? A. It perpetuated the Assembly that had been begun in Penn's time and provided for a Council, which would be an upper House.

Q. Well, what was the representation in the Assembly? A. Seven from each county elected annually.

Q. And that your say would correspond to which House? A. That would be the House of Representatives, or the lower House. And for the upper House the Council was three from each county elected annually.

Q. How long did that Constitution continue in effect, Mr. de Valinger? A. Until the Constitution of 1792.

Q. What did that Constitution provide with re-
469 spect to representation? A. That Constitution provided with respect to representation a House of Representatives, seven from each county, elected annually, and the name of the upper chamber was no longer the Council but became the Senate, and it was three from each county elected annually for three years, and that Constitution, I might insert, was again formulated by a convention of thirty delegates, ten from each county.

By Judge Wright:

Q. Were the representatives elected for one year or three? A. The representatives were elected annually for one year.

By Mr. Hughes:

Q. Now, Mr. de Valinger, are there any reports of the debates or proceedings of the Constitutional Convention which you have been talking about? A. Yes, there are. There are limited ones.

Q. Limited ones? A. A limited one, an abbreviated one, for the one of 1776. In fact, it has been published by our Commission some years ago. And there is one for 1792.

Q. In those debates— A. Excuse me, that is not debates; that is a journal.

Q. Is there an indication about the proportion of
470 the representation to the various counties in the records of those proceedings? A. Not to my recollection.

Q. There was another Constitutional Convention in 1831, wasn't there? A. Yes, there was.

Q. What did that do to the representation in the General Assembly? A. Well, in the House of Representatives there were still seven from each county, and they were elected for two-year terms. The Senate had three from each county for four-year terms, and we got the beginning of biennial sessions. Again this was formulated by a State Convention, thirty delegates, ten from each county.

Q. Was there discussion in that convention about the representation in the Assembly? A. I am not sure.

Q. I see. Let us proceed on to the next convention; when was that, in 1852? A. It was 1852.

Q. Was there discussion about the proportion of representation? A. Yes. There was considerable.

Q. That was a great question in that convention,
471 was it not? A. Exactly right.

Q. What was the result of the convention? A. It was submitted to the people of the State, and it did not pass.

Q. A Constitution was submitted to the people? A. The Constitution was not accepted.

Q. It was rejected? A. That is right.

Q. Did it continue to provide for equal representation by counties? A. No. It was not to be equal because there was consideration given to the growing size of the Wilmington area.

Q. How long did the Constitution of 1831 continue in effect? A. Until the Constitution of 1897.

Q. What was the result of that convention? A. The result of that convention was that the discussion about the enlarged representation for the Wilmington area, or this northern part of New Castle County, was gone into considerably. As a result of that we have the thirty-five representative districts.

Q. Yes. Are the proceedings of that Constitu-
472 tional Convention reported at length? A. Yes, they are.

Q. How was that done? A. They were taken stenographically, and the journal was published first by the State and then just recently, as you brought out earlier today, the debates were published. Heretofore they existed only in typed copies.

Q. Yes. This was one of the publications that you edited. Is that correct? A. That is right.

Q. That Constitution of 1897, then, is the one that has been mentioned in this trial many times and without laboring it it provided for the thirty-five Representatives and seventeen Senators? A. That is right.

Q. How were they divided between the counties? I know there were fifteen Representatives from New Castle, ten from Kent and ten from Sussex. A. Yes.

Q. In the course of their discussions how were the additional five that were elected from the City of Wilmington discussed and treated? A. Mr. *Salisbury* in the debates points out that there were to be two for Wilmington.

473 Q. Two Senators. A. Two Senators. Two additional Senators.

Q. By that you mean that they spoke of equal representation between Kent, Sussex, and the rural part of New Castle County, and an additional— A. Two.

Q. —two Senators for the City of Wilmington. A. That is right.

Q. An additional how many Representatives, five? A. Yes. That is right.

Q. During the colonial days, before the independence of the American colonies, what were the functions of these county governments that sent their representatives to the General Assembly? A. The function of the county governments?

Q. Yes. A. With respect to the local government you mean?

Q. Yes. A. Well, they were very extensive. They regulated many forms of activities of the citizens of that time,

from the building of roads, the laying of taxes, the assessing and collecting of taxes, providing for the poor, and many features of that sort.

474 Q. Did they provide all the local governmental services? A. Yes. The county was the strongest governmental unit.

Q. Did those county governments do everything except legislate, that is, pass general laws? A. Yes, they did, but in a way they legislated because sending their representatives to the Assembly they legislated.

Q. I understand. But I was making a distinction between the local county governments and the General Assembly composed of their representatives, or representatives of those counties. What was the further history of the counties, the local governments, after the Revolution? A. Of course, at the time of the convention they allocated a number of their duties and responsibilities to the newly-formed State, and they still continued as the strongest local unit. They were charged with the building of the roads, and the assessing, the local governmental officials such as the coroners, the sheriffs, the constables, the recorders.

Q. Have they continued in that form to the present day? A. Partially. Their duties have eroded through the years, just as the highways have been taken away from them and allocated to the State Highway Department. We have seen the abolition of the alms houses and the creation of the Welfare Home, and in similar instances.

475 Q. Do the counties still exist, however, as present-day governmental, local governmental organizations? A. Definitely, in my mind.

Q. Mr. de Valinger, I would like you to direct your attention to the period that we spoke of somewhat earlier between the time of the Declaration of Independence and the adoption of the Delaware Constitution of 1776. The counties continued their former local governments, I think you testified? A. Yes.

Q. At that time was there any discussion to your knowledge of their doing anything except forming a State? A. There may have been, but the records have not survived; but those people did have an option. They did not necessarily have to form a State.

Q. What option did they have? A. Well, they could have joined with Maryland, they could have joined with Pennsylvania, they could have become individual governmental entities, or they could have done what they did do.

Q. When you speak of those people you are referring to the people of each of these counties? A. To the people of each of the counties.

Q. Mr. de Valinger, since you became State Archivist or Assistant State Archivist, I think it was in 1939,
476 was it? A. No, 1930.

Q. Have you lived in Delaware since that time? A. I was born in Delaware, born in Middletown, Delaware, and as a small child moved to Wilmington and was raised here, educated in the schools of Wilmington and, as you know, attended the University of Delaware.

Q. And have remained a resident of Delaware since that time? A. Yes, indeed.

Q. Are you familiar with the political history of this State and the attitudes of the representatives who have been elected to the General Assembly? A. I believe I am.

Q. Have you had occasion to observe the General Assembly in session? A. Many times. My duties require me to attend sessions of the General Assembly.

Q. In general to be familiar with what is going on in the General Assembly? A. That is right.

. . . . . .

478 Q. Mr. de Valinger, have you observed patterns of voting among the members of the General Assembly?

Mr. Theisen: Objection. It is too general.

Mr. Hughes: I would like to point out to the Court that

this type of question was asked of Professor Dolan and permitted to be answered.

JUDGE BIGGS: We will hear you, Mr. Theisen.

MR. THEISEN: Well, he is asking him a question which I think is entirely too broad and general in scope. It neither is limited by time, nor is it limited as far as I know by place, and is therefore, I think, objectionable.

JUDGE BIGGS: Well, you mean, of course, voting of members of the General Assembly at Dover, do you not?

MR. HUGHES: Yes, sir.

JUDGE BIGGS: And you mean over what period of time?

MR. HUGHES: Well, over the period of time during which he has been observing the General Assembly, which I take it from his testimony is since 1930.

JUDGE BIGGS: In other words, you are asking what he has observed in patterns of voting in the General Assembly of Delaware from 1930 through, I take it, the present time, a period of approximately thirty years plus. In other words, what has the witness observed as to voting patterns in respect to what?

MR. BOVE: Your Honor, I understood the question to be "Have you observed voting patterns in the General Assembly?". He has not yet asked what the witness observed.

JUDGE BIGGS: I think you are quite right.

MR. THEISEN: May I have the question re-read, then?

(The last question was read by the Reporter as follows:)

"Question: Mr. de Valinger, have you observed patterns of voting among the members of the General Assembly?"

MR. THEISEN: May I renew my objection?

JUDGE BIGGS: Yes. The objection is overruled. Let him answer the question.

MR. HUGHES: I think I should add I do refer, of course, to—

JUDGE BIGGS: You can ask that in other questions if you are going now to your next question.

MR. HUGHES: I am adding the qualifications that the Court brought out.

480 JUDGE BIGGS: I want a separate question so that we can rule on it.

MR. HUGHES: I will withdraw the previous question.

JUDGE BIGGS: No, don't withdraw the previous question. That is now of record.

JUDGE WRIGHT: Your question is very limited. You have asked him if he has observed the legislature. When he answers that you get down to the meat of the thing. What is it you want him to testify to that he observed, the color of their hair, the color of their eyes, or just what?

JUDGE BIGGS: As to patterns of voting.

(The question was read by the Reporter again as follows:)

"Question: Mr. de Valinger, have you observed patterns of voting among the members of the General Assembly?" A. Yes, I have observed patterns of voting.

JUDGE BIGGS: Your next question, now.

BY MR. HUGHES:

Q. Mr. de Valinger, during your observation of the General Assembly since 1930 in its sessions at Dover at the House and Senate of the General Assembly of Delaware what have you observed to be the patterns of voting of members from the lower part of the State, the lower

481 two counties and the lower part of New Castle County, as opposed to those of the members from the northern part of New Castle County?

MR. THEISEN: Again I must object, your Honor. What he has observed of general patterns of voting with regard to upper and lower Delaware is not a bit relevant to anything here. If it is a specific type of voting pattern that he is interested in then I might withdraw my objection. But just a general statement, it might be concerned with whether they do or do not like muskrats on Saturday or

Sundays or something completely irrelevant to these proceedings.

JUDGE BIGGS: There is a great deal of irrelevant material in this record, Mr. Theisen. I would overrule the objection. We assume this will be made relevant to some of the issues here. We will take it subject to that, overruling the objection.

MR. HUGHES: If the Court please—

JUDGE BIGGS: Well, we have allowed it.

(The last question was read by the Reporter.)

A. Despite the size of our small State, I have observed differences of interest. For example—

JUDGE BIGGS: That is not responsive.

BY JUDGE BIGGS:

Q. Differences of interest in respect to voting? A. In voting on issues.

482 Q. In other words, you have observed differences in voting patterns due, you believe, to the difference of respective interests? A. Yes, sir.

. . . . . .

Q. What issues have you observed this type of thing in connection with? A. For example, the representatives of New Castle County are in favor of the county zoning. As yet it has not been approved by the representatives from Kent or Sussex. It is under consideration, has been at previous sessions, but as yet it has not been approved.

Another instance is that the people, or the representatives from Kent and Sussex, are often opposed to eminent domain. They are not favorable toward the calling of a new Constitutional Convention. They have opposed

483 controlled access highways as proposed by the State Highway Department. They are more interested in agriculture than the citizens of New Castle County. They take a much more active and decided interest in fish and

game laws. The majority of them are introduced by representatives from the lower counties. They have manifested that they are much opposed to the right to work bill, and subjects of that type.

Q. In those fields then you have detected a difference in attitude? A. Yes, I have.

Q. Of the representatives from the lower part of the State as opposed to the attitudes of the representatives from the northern part of the State? A. Yes, I have.

Q. One final question then, Mr. de Valinger: You testified that the functions of the county governments had remained more or less the same but that some of their duties had eroded or been abandoned? A. That is right.

Q. Has there been any change in the other direction, that is, toward adding some duties or functions? This would cover, if I may add, the period during which you have testified, say, since the formation of the Delaware State in 1776. A. I would say not in Kent or Sussex
484 but in New Castle County I believe they have had drainage added to them in more recent years. They did in the earlier colonial periods have that as a duty, but not in between this period.

Q. Well, there have been then some functions added to them—

JUDGE BIGGS: Well, that one. Are there any others?

BY MR. HUGHES:

Q. Are there any others that you can think of, Mr. de Valinger? A. Well, in the colonial period and the early Revolutionary period of course the constables and the sheriffs acted as a police force, and we do find now in modern times a county police force in New Castle County that you do not have in Kent or Sussex.

MR. HUGHES: Cross-examine.

BY JUDGE BIGGS:

Q. One question. It is hardly relevant, but I would like to have the answer. Didn't Caesar Rodney cast the

deciding vote? A. Yes, your Honor. It not only was the deciding vote in our delegation but also in the convention.

JUDGE BIGGS: Thank you. Would you proceed, Mr. Theisen?

MR. THEISEN: Yes, sir, I shall.

485 CROSS-EXAMINATION

BY MR. THEISEN:

Q. Mr. de Valinger, I believe you said that you edited or rather worked with the first census figures of 1790? A. Yes, sir.

Q. You are then familiar with the population, are you not, of all three of the counties at that time? A. I was familiar with those figures then, when I worked with them.

Q. Are you not now familiar with them? A. No, I am not.

Q. Well, do you have a recollection as to whether they were pretty near equal in number? A. At 1790 they were, approximately.

Q. Well, weren't they actually 18,000, 19,000, in that area, each of them? A. In the 2,000 bracket.

Q. I beg your pardon? A. I would say within 2,000 bracket.

Q. Well, if I suggest they are within 1,000 bracket, would that sound off to you?

MR. BOVE: The witness has testified on that to his knowledge. Maybe Mr. Theisen's knowledge is different.

JUDGE BIGGS: Mr. Theisen, you can certainly sug-
486 gest this, but these figures are certainly susceptible of proof. I think the Court could take judicial notice of them if you desire to put them in the record that way. We do not object; we are not preventing you from continuing.

MR. THEISEN: I was testing his recollection as to what those figures were.

By Mr. Theisen:

Q. Mr. de Valinger, in the work "Delaware, the First State", which I am sure you are familiar with, the one edited by Mr. Reed— A. Yes.

Q. On page 261 of that volume the census figures for 1790 for the three counties are as follows: New Castle, 19,686; Kent County, 18,920; Sussex County, 20,488; a total population of 59,094. Is that your recollection? Does that refresh your recollection, those figures? A. That is the reason I said about 2,000.

Q. Are you familiar with the population figures of the three lower counties at the time, let's say, of independence? A. No, I am not. I wouldn't want to rely on my memory for that.

Q. Well, does your memory serve you well enough to say that they were about equal in population at that time also?

A. Yes.

487 Q. Do you know any of the population figures for the period preceding the Declaration of Independence? A. No, I do not.

Q. May I take you back a few years prior to the Declaration of Independence and call your attention to the end of the seventeenth century and frame my question to the lower counties and ask you if you can recall and recite to the Court what the grievances were that led to the separation of the three lower counties from the proprietary Penn colonies? A. May I read from this volume?

Q. Well, I am asking you first, Mr. de Valinger, as a historian, do you know what those grievances were? A. Yes, I know what some of them were.

Q. Well, may I ask you if it wasn't a fact that one of the determining grievances for separation from Pennsylvania was the fact that this burgeoning Philadelphia metropolis was demanding more representations in the Assembly? A. That is not my interpretation of it.

Q. May I read to you from Reed's book, page 260, and

ask for your comments upon this. The author states, beginning on the bottom of page 260 and running over to 261:

"Another obstacle to literal majority rule in Delaware government remains to be mentioned, the lack of representation according to population. This is true of
488 both Houses of the Legislature, and the reason for it is historical. In the Assembly set up by Penn which introduced representative government into Delaware each colony was allowed an equal number of members, and so it has remained ever since. When at the end of the seventeenth century the growing metropolis of Philadelphia demanded increased representation, the Delaware county seceded and set up a separate legislature in 1704."

Does that refresh your recollection as to one of the reasons, one of the compelling reasons, why they seceded and set up their government?

. . . . . .

A. I will be glad to answer that and say that on April 12 of 1701 the Charter of Privileges was granted by proprietor Penn, and one of the privileges was that if there was a separation of the three lower counties from Pennsylvania, from the province of Pennsylvania, the upper counties might be allowed to expand their representation in their own Assembly, and the Delaware—or three-
489 lower county Assembly to be established at New Castle could determine their own representation. But this was not the cause of the separation; this was conditional on the fact if they did do that.

. . . . . .

Q. Was this one of the grievances that led to the separation? A. It may have been one of the grievances.

Q. Now, then, at that time, and until 1776, the three lower colonies were, as I understand from the history and from your testimony, they remained as proprietary holdings of the Penn family, did they not? A. They did.

Q. So they were not at that time, and had not been until that time, any sovereign power, had they? A. It depends upon the definition of "sovereignty" in this instance.

Q. They were owned by Penn and his family, weren't they? A. They were owned by them.

Q. And they were governed by the representatives—the top governing official was a direct representative of William Penn's family, was it not? A. Yes, but there were breakdowns in the Penn system; for example, the
490 whole *quick* [quit] rent system that they had imposed broke down, and there were other aspects of it.

Q. By the way, where was Thomas McKean from? A. New Castle County.

Q. Where was George Read from? A. New Castle County.

Q. So that the three lower counties were not represented in the Continental Congress by representatives from each of the three lower counties, were they? A. Not at that particular time.

By Judge Biggs:

Q. I have always thought that George Read lived just outside of Dover. Am I wrong? A. He lived in New Castle.

Q. Lived in New Castle, the town of New Castle? A. Yes.

By Judge Wright:

Q. When did he move into that house down there, isn't there a house near there, George Read? A. Outside of Dover?

Q. Yes. A. May I suggest you are thinking of John Dickinson.

Judge Biggs: The Court is obviously not well equipped with Delaware history. Pardon me, Mr. Theisen.
491 Mr. Theisen: It is quite all right, your Honor.

Judge Biggs: In these matters I suppose ignorance is preferable to apathy, is it not?

MR. THEISEN: Yes, I should think so. It is remarkable how one's history gets sharpened when one gets into a case like this.

JUDGE BIGGS: Yes, and how one forgets it quickly.

MR. THEISEN: Yes.

BY MR. THEISEN:

Q. When we move into a different type of government, we move into the Constitution of 1776, didn't that Constitution, which was the first one as a State, provide for a bicameral system? A. Yes, it did.

Q. Hadn't the systems prior to that been—strike that. Weren't the members of that bicameral body elected from the counties at large? A. When you say "at large," do you mean from all three counties?

Q. No. From each county. Did you say each county elected its representation at large from that county? A. Yes.

Q. Isn't that correct? A. That is right.

492 Q. That continued, did it not, through the Constitution of 1792? A. Yes, it did.

Q. The delegates to these conventions were elected at large, were they not? A. Within their counties.

Q. In 1792. Yes. Now, then, in the Constitution of 1792 what provision, if any, was made to allow for the expansion of the House and Senate in the event of an increase in population? A. I am not aware that there was any.

Q. Are you aware or you are not aware then of the fact that the Constitution of 1792 permitted the House and Senate by a two-thirds vote to increase the size of their membership? A. I do recall that they could do that.

Q. That is correct, is it not? A. Yes.

Q. So as early as 1792 this State was looking forward to expansion because of growth in population. Isn't that correct? A. Yes.

Q. The Constitution, the next one that we speak of, is the Constitution of 1831. Is that correct? A. That
493 is correct.

Q. Do you know the population of the State of Delaware by 1830? A. No, I do not.

Q. Do you know what motivated the call of the convention of 1831? A. I am not sure. I would think that perhaps it might be the beginning of industrialization in the State.

Q. Was it the beginning of the demand of the northern part of the State to have additional recognition? A. I do not recall reading anything to that point.

Q. You do not know whether that is so or not? A. I do not know.

Q. Now, then, following the promulgation of the convention of 1831 the Representatives and Senators continued to be elected at large, were they not? A. Yes.

Q. In the counties. A. Yes.

Q. Now, do you know, as a historian, what happened to the population of this State between 1840 and 1850? A. I know that it increased considerably.

Q. Where? A. In the northern part of the State.
494 Q. Is it not a fact that it burgeoned and started expanding tremendously in the northern part of the State? A. Yes. That is right.

Q. As a historian are you aware of what occurred in the early fifties with regard to demands on the part of the northern part of the State for additional representation? A. I know that there were demands for it, for representation.

Q. In 1850 wasn't a Governor elected on the basis or on a platform that there would be a constitutional convention to give additional representation to the northern section? A. I believe so.

Q. Wasn't there, in fact, a series of resolutions adopted in the legislature calling for a constitutional convention? A. I do not know that.

Q. One was called, was it not, in 1853? A. Yes, 1852, as I recall.

Q. '52. There was an amendment to our Constitution, was there not, or at least a draft was proposed and adopted by a convention? A. A new Constitution.

Q. What did that Constitution have to say with regard to the representation of the City of Wilmington? A.

495 Mr. Bayard's address called for—called attention to the expanded population and called for additional representation.

Q. As a matter of fact, that Constitution or the draft of the Constitution that was adopted did give additional representation to Wilmington, did it not? A. Yes, it did.

Q. And that Constitution was taken to the people, was it not? A. Yes, it was.

Q. Do you know the reason it was defeated? A. I do not know why it was defeated.

Q. At any rate it was defeated, was it not? A. It was defeated.

Q. So here again in 1852 or '53 there was early agitation on the part of the people in the City of Wilmington for alequate representation in our General Assembly. Isn't that correct? A. That is correct.

Q. Now, then, the next Constitution that we have discussed is the Constitution of 1897, and you prepared and helped, assisted in printing the debates of that Constitution. A. I did.

496 Q. I am sure you are familiar with them? A. Yes.

Q. I ask you whether or not there weren't repeated requests on the floor of that constitutional convention for additional representation for the swollen population of the City of Wilmington? A. There was.

Q. And as a result of that agitation Wilmington did get representation, did it not? A. Yes.

Q. And the two Senators that Wilmington got that were added to New Castle County were really Wilmington Senators, were they not? A. Yes, they were.

Q. And the five Representatives that they got were really Representatives not from New Castle, but from the City of Wilmington; isn't that correct? A. I have not been able to substantiate that point. Mr. Salisbury's statement was that the two additional Senators were from Wilmington. I have not seen the statement that the five additional Representatives were. We assumed that.

Q. Well, you assumed that? A. Yes.

Q. There is nothing to the contrary to assume
497 otherwise? A. No.

Q. Now, the Constitution of 1897 was not submitted to the people for ratification, was it? A. No.

Q. Are you aware that the Enabling Acts leading to the call of that convention provided that it should be submitted to the people for ratification? A. No, I was not aware of that.

Q. Do you recall sometime ago receiving a telephone call from me asking that I be provided with a copy of the original Article 2, Section 1 and Section 2 of the Constitution of 1897? A. Actually I do not recall.

Q. I hand you a document and ask you if that is your signature? I hand you three of them, as a matter of fact.

JUDGE BIGGS: Three documents?

MR. THEISEN: Triplicates of the same.

A. Yes, this is my signature stamp.

BY MR. THEISEN:

Q. Is that your signature? A. No.

Q. You did not sign that personally? A. No.

498 Q. Is your office authorized to authenticate documents in that manner? A. Yes.

Q. And is this truly an authenticated copy of what it purports to be? A. Yes, it is.

Q. What do those documents purport to be? A. Article 2, Sections 1 and 2, Constitution of 1897.

Q. Would you kindly hold one of those documents in

your hand? Would you point out to me where Paragraph 2 of Article 2—

JUDGE BIGGS: Just a moment. Have you examined these, Mr. Bove?

MR. THEISEN: Excuse me.

JUDGE BIGGS: Any objection?

MR. BOVE: None, sir.

JUDGE BIGGS: Let it be marked as an exhibit. This is cross-examination, but we will admit it out of order.

MR. BOVE: We have no objection.

(The photostatic copies of Article 2, Sections 1 and 2 of the Constitution of 1897 were received in evidence and marked "Plaintiffs' Exhibit No. 23.")

BY MR. THEISEN:

Q. Mr. de Valinger, would you be kind enough to
499 mark on the copy that you have in your hand where Paragraph 2 of Section 2 of that Article is to be found? Paragraph 2 of Section 2. A. You want me to mark where it is to be found?

Q. Yes, would you please show us where that is?

JUDGE BIGGS: Just take a pencil and mark it.

BY MR. THEISEN:

Q. You were pointing then to Section 2, were you not? A. Yes.

Q. My question is would you show me where Paragraph 2 of Section 2 is to be found? Paragraph 2, Section 2.

JUDGE BIGGS: What page?

MR. THEISEN: I am asking the witness to indicate what page that occurs on, your Honor.

JUDGE BIGGS: I think it is page 11, is it not?

THE WITNESS: You are asking for Paragraph 2—

MR. THEISEN: May I strike that last question?

By Mr. Theisen:

Q. Would you please indicate on there where Paragraph 1 and Paragraph 2 of Section 2 of Article 2 are to be found? Do you understand the question? A. Yes.

Q. Paragraph 1 of Section 2 and Paragraph 2 of
500 Section 2. A. I don't see any paragraphing, anything that indicates that there is a Paragraph 2.

Q. You do not see any Paragraph 3 in that handwritten copy of the Constitution? Is that the true and correct copy of the Constitution of 1897? A. Yes, it is.

By Judge Biggs:

Q. Just a moment. Let me interrupt. I am not talking now as to whether this is in haec verba—that is, in the same language. This is sort of a copy affair. Is this the original copy, a photostatic copy of the original document page for page? A. Yes, sir.

Q. In other words, this is not a photograph? A. This is a photostatic copy.

Q. Of the original? A. Of the original.

Judge Biggs: Thank you.

By Mr. Theisen:

Q. Where do you find Paragraph 1 of Section 2 of Article 2? A. From the indentation I would presume it begins with the words "The House of Representatives."

Q. Would you mark that No. 1 for me, please, in
501 pencil? A. May I ask counsel if I should?

Judge Biggs: You may certainly mark it.

(The witness complied.)

By Mr. Theisen:

Q. Now would you indicate where Paragraph 2 starts?

* * * * * * * * * * *

502 A. Yes, I would presume that on page 13 No. 2 might be it.

By Mr. Theisen:

Q. Starting with the words what? A. "No. 2, All that portion of the said city included"—

Q. "All of that portion of the said city included"? Thank you very much.

By Judge Biggs:

Q. Mr. de Valinger, I understand you testified that this was a photographic copy of the original? A. Yes, sir.

Q. Isn't there on file and wasn't there signed a printed copy of the original? A. No, sir. This was the original manuscript that was filed.

503 Q. And signed? A. Yes.

Q. By the chairman and the members and the secretary and so forth? A. Of the constitutional convention, your Honor.

Judge Biggs: Thank you.

By Mr. Theisen:

Q. Mr. de Valinger, may we now go on to these patterns of voting differences that you say you have observed between the northern area representatives and those in Kent and Sussex Counties? I believe you have stated that in the years that you have observed the action of the General Assembly of the State—and this goes back to 1931, does it? A. Yes.

Q. Until the present day you have detected a difference of interests in a number of fields; is this correct? A. That is correct.

Q. And has this vote that you say has been diametrically opposed one to the other, has this persisted over the years since 1931 to the present time?

Judge Biggs: I don't think the witness used the phrase "diametrically opposed." This is proper cross-examination, but we have Mr. de Valinger here as an expert. "Opposed" I think is the phrase the witness used, and I

would like to have this point perfectly clear. I think
504 if is one of very substantial importance. So I suppose the question will be stricken unless—

MR. THEISEN: Strike the question.

BY MR. THEISEN:

Q. Mr. de Valinger, these differences of interest that you have observed in voting patterns between the upper county and the lower two counties, have these been differences that are just shades of differences or have they been directly opposed one to the other? A. In some instances they have been directly opposed one to the other.

Q. Would you use the word "diametrically opposed" in that case? A. No, I prefer it as I have stated it.

Q. Directly, all right. What are the issues that you have observed through the years in which there has been direct opposition? A. There has been direct opposition to zoning.

Q. Where is that zoning? What area of zoning are we talking about? A. We are talking about county zoning in Kent and Sussex Counties.

Q. Well, isn't it a fact that in New Castle County
505 there is county zoning? A. There is county zoning in New Castle County.

Q. And is it your point that Kent and Sussex were opposed to New Castle's rezoning itself? A. No, they are opposed to Kent County and Sussex County being zoned.

Q. Is it your point then that New Castle County has been for zoning down in Kent and Sussex Counties? A. My point is that the people, or the representatives of Kent and Sussex Counties have been opposed to zoning in their counties for themselves, for the extension of zoning that you have in New Castle County to those counties.

Q. Well, has New Castle County tried to force zoning on Sussex County? A. No, it hasn't but exponents of zoning have urged that it be extended into those counties.

Q. But that would be on a county basis, would it not? A. Yes, it is on a county basis.

Q. And so far as you know New Castle has not tried to tell Kent or Sussex they have got to rezone, have they? A. No, they have not.

Q. What are some other instances which in your mind show a direct opposition of the northern part of the State to matters of interest to the middle or lower county? A. The right to work bill.

506 Q. Now, what has been the position of New Castle on the right to work bill? A. They have opposed the right to work bill—at least some portions of New Castle have.

Q. And what has been the position or pattern that you have observed with regard to Kent and Sussex on this right to work bill? A. They have advocated it.

Q. Has this ever come to a vote? A. I do not recollect.

Q. Well, as a matter of fact, hasn't the right to work bill been bottled up in a committee every time it has been introduced? A. I believe you are correct.

Q. It has never come on the floor, has it? A. I don't think so.

Q. So when you spoke of patterns of voting, you must have been wrong about a pattern of voting with regard to the right to work bill, which has never come out of a committee? A. The sentiment for the vote was there.

Q. But it has never been voted on? A. Actually that one has not.

Q. What are some of the other matters that you think that New Castle and Sussex are in direct opposition

507 over? A. Some of the game and fish laws or bills.

Q. Some of them? Not all of them but some of them? A. Some of them.

Q. Well, let's get to the big one. The big one is a constitutional convention. Now, there has been a direct opposition on that matter, hasn't there? A. Not actually on voting there hasn't, but there is sentiment in opposition.

Q. Well, then, forget about your patterns of voting that

you spoke of before. Let's talk now about your observation of sentiment. A. All right.

Q. From what you have observed since 1931 to the present time what is the attitude of Kent and Sussex Counties about a constitutional convention being convened? A. The attitude of Kent and Sussex Counties is in opposition to it.

Q. And what has been the pattern of thinking in New Castle County with regard to the calling of a constitutional convention? A. The attitude in New Castle County is that there should be a constitutional convention.

* * * * * * * * * * *

508 REDIRECT EXAMINATION

BY MR. HUGHES:

Q. Mr. de Valinger, you were questioned about the grievances or reasons that led to the separation of the three lower counties from the province of Pennsylvania? A. Yes.

Q. What were those grievances? A. Well, there were differences between the peoples themselves. The inhabitants of Pennsylvania were of English birth whereas those from the lower counties were of Swedish and Dutch as well as English. There were religious differences. The people of the province of Pennsylvania were Quakers whereas those of the lower counties were Calvinists, Lutherans and Episcopalians.

There had been considerable commercial rivalry between the port of Philadelphia and the port of New Castle.

Chester County of the province of Pennsylvania and New Castle County had disagreed about their respective boundaries. There were disputes of elections because of these disagreements.

509 Then also there was political jealousy that developed, sectionalism, between these peoples of the lower counties and of the province of Pennsylvania.

Q. So that I gather that there were quite a few different things. Can you single any one as the most important?

A. Probably the most important was the fact that writs of election were frequently delayed for the representatives of the lower counties, and they didn't get their representatives in the General Assembly soon enough, or they absented themselves, or they would also find that upon attending the General Assembly in Philadelphia that the business before the General Assembly pertaining to the Pennsylvania counties would be enacted upon and the Delaware representatives would sit there weeks and months waiting to be heard or to have their business transacted while their fields were unplowed or work at home was being neglected or crops were not being harvested—things of that type.

Q. I don't hear in any of that the fear of additional representation to be granted to Philadelphia because of its growing population. Was that a factor? A. The only way in which it was a factor was in the Charter of Privileges of 1701 there was a permissive clause that if there was a separation, the counties of Pennsylvania could expand their representation.

510 Q. Then do I take it from that that if the people of Philadelphia wanted additional representation they had to obtain it by or after a separation of the three lower counties? A. After the separation. The separation is credited to the Delaware counties rather than the Pennsylvania counties.

Judge Biggs: I do not follow that. I think we better go into it a little more.

By Judge Biggs:

Q. Certainly if this was included in the articles of separation, Mr. de Valinger, there must have been some cause for it. What was the cause so far as your recollection or knowledge of history shows? A. The cause was largely the dissatisfaction of the representatives from the Delaware counties the way their business was being neglected when they took it to the General Assembly at Philadelphia.

Q. I do not want to get cause before effect or treat

effect as cause. The separation was effected. Who wanted the separation? A. The Delaware counties wanted it.

Q. Pennsylvania did not want the separation—pardon me—the upper counties did not want the separation? A. No, I will say that their interest in that is minor
511 because Penn wanted so badly to keep them united, and his Council with him wanted to keep them united, but the Delaware counties did persist in their desire to be separated because of the unsatisfactory—

Q. Well, what I understood you to say was, the representation could not be increased, or at least was not increased, so long as the three lower counties remained in the set-up? A. Yes, sir, that is correct.

Q. Was this, so to speak, bait for the release of the lower counties which some ingenious member inserted in the provision? How did it get there? A. It got there because Penn had been so harassed by the threats to have their separate Assembly, by the threats of the three lower counties to appeal to the Crown to become a colony, that in this Charter of Privileges of 1701 this clause was inserted.

Q. Namely what? A. That in the event of a separation and the formation of a separate Assembly for the three lower counties that Pennsylvania counties could expand their own representation.

Q. Isn't that a very odd thing to put in what was a bill of rights for three counties would then become dis-
512 connected with the group? A. Yes, it was odd.

Q. You think this was simply because Penn desired to be relieved of harassment and retain some control, and took a compromise method whereby these Governors and he kept some control? A. Yes. He was trying very much to get affairs of the proprietary government in shape before he returned to England. He had to return to England.

Q. Why would the lower counties have been affected; why would they care at all whether or not the upper coun-

ties increased representation in the Assembly if they had their own? A. I question that they did care. There is no indication that I have seen—

Q. This was put in anyhow? A. This was.

Q. That is a rather mysterious situation, is it not? A. Yes.

Q. There is nothing in your research that has led to any cogent reason as to why this mysterious event occurred? A. No. There may be some correspondence with Logan that would disclose that, but I haven't seen any.

Q. Logan was the Deputy Governor? A. He was the secretary of William Penn.

513 JUDGE BIGGS: Pardon me, Mr. Hughes.

BY MR. HUGHES:

Q. Logan was William Penn's secretary? A. William Penn's secretary.

Q. The Governor at that time was Governor Evans?

JUDGE BIGGS: Who was the Governor, the Deputy Governor?

MR. HUGHES: The Deputy Governor. Excuse me.

THE WITNESS: There was Evans and Fletcher both about the same time.

JUDGE BIGGS: Evans and Fletcher?

THE WITNESS: Yes.

JUDGE BIGGS: Thank you.

BY MR. HUGHES:

Q. At any rate, that part of the thing, as I can see it, it seems to me it would not have been a threat of—

JUDGE LAYTON: Is this a question?

MR. HUGHES: Yes. Excuse me. I am leading the witness, I realize. Please withdraw it.

BY MR. HUGHES:

Q. That, then, is all you can explain about the reasons for the separation of the three lower counties. Is that

correct? A. As far as the history of our State is
514 concerned it is. It is not a major issue. Most of the time little notice is taken of it.

Q. What is not a major issue? A. The fact that the Pennsylvania counties would get increased representation.

Q. Under the Constitutions of 1776, 1792, and 1831, I think you testified that elections of representatives to the General Assembly were at large. A. Yes.

Q. Then you added by counties, or something to that effect. A. Yes.

Q. How were the elections conducted under the Constitution of 1776? A. The qualifications for election were spelled out in laws that had carried over from the colonial period, and writs of elections were issued by the sheriff, and the voters entitled to vote went to the places of election and voted.

Q. In other words, I think it was freeholders at that time, was it? A. Freeholders. That is right.

Q. Where would they go to hold the election? A. The county seats were always places of election.

Q. Then the qualified voters in New Castle County
515 would have gone at that time to New Castle? A. To New Castle.

Q. And those of Kent County? A. Would have gone to Dover.

Q. And those of Sussex County? A. Lewes, up until 1795.

Q. I did not hear that answer, I am sorry. Lewes up to when? A. Up to 1795.

Q. Yes. When they attended the election at the county seat they elected, then, all the representatives or members of the General Assembly from that county at large? A. Yes, they did.

Q. Which was the first Constitution to provide for election of Representatives and Senators from districts within the county? A. The Constitution of 1897, our present one.

521 Thursday, January 24, 1963,
2 o'clock p. m.

PRESENT:

As before noted.

MR. O'DONNELL: With the Court's permission we would like to call Mr. Houston Wilson.

JUDGE BIGGS: May the Court say it greatly appreciates the courtesy of counsel in going forward at this time.

Houston Wilson,

called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

JUDGE BIGGS: Mr. Wilson, it is a great pleasure having you here today.

DIRECT EXAMINATION

BY MR. O'DONNELL:

Q. Mr. Wilson, notwithstanding the fact that you are personally known to the Court, for the record I would like to get certain background information. Would you please tell us what your education was? A. I have an A.B. from Swarthmore College and a law degree from Yale Law School.

Q. Do you practice law? A. I have been practicing
522 law in Sussex County since 1935.

Q. Have you taken part in political activities in Sussex County? A. Yes, I have.

Q. What has your participation been? A. I am a Democrat. I have not been especially active since the early 1950's. Mainly I have done some stump speaking for the Democratic Party. Prior to that I was more active, served on the State Committee, ran as an unsuccessful candidate for Attorney General, and served on the County Committee. I think I am now a member of the State Committee.

Q. Have you served in the legislature in this State? A. In the 1951 session of the General Assembly I was attorney for the Senate or one of two attorneys for the Senate.

Q. Where do you reside, Mr. Wilson? A. I now reside at Georgetown, Delaware.

Q. Will you please recall last summer and tell the Court what happened with respect to apportionment in the State with particular reference to action taken by the Governor of the State?

. . . . . .

526 A. The Governor convened what we call or characterize as a Governor's Committee. As a result of the first session of that committee a Bipartisan Reapportionment Committee was formed.

That Bipartisan Reapportionment Committee was formed in the following manner: The chairman of the State Committee of the Democratic Party appointed four members. The chairman of the State Committee of the Republican Party appointed four members of the Bipartisan Reapportionment Committee. That Reapportionment Committee was charged with the responsibility of endeavoring to formulate a plan of reapportionment for the State General Assembly and, two, to consider the feasibility and advisability of convening a constitutional convention of the State of Delaware.

By Mr. O'Donnell:

Q. Were you a member of either of those committees, Mr. Wilson? A. I was not a member of the parent committee, which we would call the Governor's Committee. I was appointed by the Democratic State Chairman as a member of the Bipartisan Reapportionment Committee, and subsequently I was selected as the chairman of
527 that committee and made my report, together with the other members of the committee, to the Governor's Committee at its second session.

MR. THEISEN: Now, may I move to strike all of the testimony of Mr. Wilson relating to anything that had to do with the Governor of this State prior to the time that he was appointed to this committee. It obviously had to be hearsay evidence insofar as this witness is concerned.

JUDGE WRIGHT: Mr. Theisen, we don't want to—at least I know I don't feel we should stick to the strict rules with respect to evidence; but even if we were, would this not be background testimony which would not be a question of hearsay, just background? There is nothing here yet that is any more than—I feel—is background leading up to what—

JUDGE LAYTON: You are not prejudiced at this point, Mr. Theisen, are you? Let us assume this is irrelevant, you are not prejudiced by this.

MR. THEISEN: All right. Let me make my position clear with the bench. I will probably be objecting more this afternoon than I have at any other time during the trial. I have strong feelings about the testimony that is about to be produced today as nothing having one thing to do with the issue before the Court.

I want to preserve my right for the record, if it becomes material, that I have not sat idly by and let this
528 testimony come in, and for that purpose I trust that you will indulge me in my constant repetition.

JUDGE BIGGS: The objection is overruled. Just a moment, please, Mr. O'Donnell. (Pause)

All right. You may proceed.

BY MR. O'DONNELL:

Q. I had asked you, Mr. Wilson, if you were a member of either of the committees you have just referred to? A. Yes. As I explained before, I was appointed by the Democratic State Chairman as one of the four Democratic members of this Bipartisan Reapportionment Committee, and at its first session I was selected as the chairman of that committee.

Q. Will you please tell the Court what the committee did with respect to this issue? A. Chronologically, for myself, between the time that I received notice of my appointment and the first meeting of the committee I endeavored to prepare myself as best I could within a short period of time as to the issues and problems which would confront the committee.

The committee first convened at the Administrative Building of the Delaware Memorial Bridge on Thursday evening, July 12, 1962. We had a full open session at that particular meeting. We organized at that meeting.
529 I was selected as chairman and Mr. Harold Schmittinger, another member of the committee, was selected as secretary. The committee recessed at the end of that evening's session and again convened on July 17, 1962, at the Treadway Inn in Dover, Delaware, where we had, I believe, two full sessions, two full open formal sessions. We then convened again July 21, 1962, an afternoon session, at the Treadway Inn at Dover.

As I recall, that lasted into the evening, also.

Following that I undertook to prepare the formal report of the committee. Mr. Schmittinger and Mr. Hartnett undertook to prepare a portion of the legislation which we were to recommend as part of our report.

I requested Judge Herrmann, of the Bar here in Wilmington, to assist us in the preparation of some of the legislation pertinent to the report, and we then met in another formal session at the Governor's offices in Dover, I believe on the 23rd day of July, reviewed the report, reviewed the legislation, and then went into the main offices of the Governor and presented our report together with the attendant copies of the legislation to the parent committee, or the Governor's Committee itself, which had been convened awaiting our report at that time.

. . . . . .

531 Q. Would you describe the membership?

MR. THEISEN: If your Honor please, of course I object.

JUDGE BIGGS: I understand that. Your objection goes to the entire line here. We so understand. It goes to this entire line of questioning.

A. Four members of the committee were members of the Republican Party, one of which was from the City of Wilmington, one from the County of New Castle, one from the County of Kent, and one from the County of Sussex. Four were members of the Democratic Party, likewise one each from the City of Wilmington, New Castle County, Kent, and Sussex.

Their names were Mr. Harold Schmittinger of Dover. Mr. Schmittinger is a Republican attorney. I believe that he holds a degree from a university and from a law school and is actively engaged in the practice of law. He has been active in politics and civic affairs for a considerable number of years.

Mr. Maurice A. Hartnett, III, of Dover. Hartnett is a Democrat, also a member of the Bar and actively engaged in the practice of law for a number of years and holds a university and law school degree, and has been active in Democratic politics. He was then and I believe he

532 still is head of the Legislative Reference Bureau of the State of Delaware. I think he also has served as an attorney to the General Assembly for a number of sessions. He also has business interests in Dover and throughout the State.

Next is Mr. Thomas L. Johnson of Rehoboth Beach. Mr. Johnson is an industrialist, an active member of the Republican Party, and he has served as a Senator from the Senatorial District including Rehoboth in Sussex County, and he has also served as Chairman of the County Committee of the Republican Party. He is very active in many civic affairs and in many business interests and serves on boards of directors.

Next is Mr. Gerald P. Cavanaugh. Mr. Cavanaugh, I believe, has been for a number of years one of the house counsel for the Hercules Powder Company. He is a Republican and active in the Republican organization of the City of Wilmington for a considerable number of years. He was once Republican candidate for Mayor of the City of Wilmington. He has been active in many civic and other organizational affairs.

Next, is Mr. Frank O'Donnell, who is yourself, a member of the Bar, former Chief Deputy Attorney General, and Secretary for many years and Chairman of the New Castle County Democratic Committee, and I understand that you have many active interests in many civic organiza-
533 tions and in many church affairs. You hold a university and a law school degree.

Next is Mr. Ernest S. Wilson, Sr., retired chief engineer of the Hercules Powder Company. Mr. Wilson has served on a great many of the various governmental agencies of this State, been a leader of the Republican Party for a great many years, and active in many civic organizations.

Next is Mr. Michael A. Poppitti, who is now and was then the City Chairman of the Democratic Party City Committee. At one time he was candidate for Attorney General. He is a lawyer and has a college degree and a law school degree. He is very active in many civic and church affairs.

I think I have covered them all except possibly myself. I mentioned what degrees I hold, how long I have been practicing law, and my party affiliations. I have lived in Sussex County all my life. I have wide acquaintances throughout the State. Perhaps I can class myself as a very rank amateur historian, one of my hobbies, and I am active in church affairs both on the local and diocese and national level, and have indulged in quite a number of civic affairs with various civic organizations.

Q. Mr. Wilson, in addition to the meetings which you described a few minutes ago, were public meetings held

in New Castle, Kent and Sussex County by members of the committee?

JUDGE BIGGS: You mean meetings to which the
534 public were invited?

MR. O'DONNELL: Yes, sir.

A. In Sussex County between the meeting of July 12 and July 17 Mr. Johnson and I—by the way, I should back up and say that this committee was composed of two from Wilmington, New Castle County, Sussex County and Kent County—that is, two each. Senator Johnson and I were from Sussex County. We convened a meeting at the Sussex County Courthouse to which we invited all of the members of the General Assembly, both the Senate and the House of Representatives, certain members of the local Bar of Sussex County, aside from myself, from both political parties to attend, and we gave them a full explanation and a full report of the functions, duties, responsibilities and efforts that we were then making toward arrival at a plan of reapportionment, gave them a full report as to the discussions pro and con with regard to the calling of a constitutional convention. We invited questions, and we asked for their comments.

We made our report to the Bipartisan Committee as a result of that meeting, and the members from Kent County did likewise. They indicated that they had held similar meetings with members of the General Assembly from that county.

Also I believe that you made a report and Mr. Poppitti made a report that you had held similar meetings
535 and also that you had held public meetings to which the public was invited.

Q. Now, in addition to the formal meetings that you have described, did the committee meet informally for luncheons, dinners and other informal meetings to discuss this problem? A. Well, Mr. O'Donnell, some of us would arrive early before the meetings went into formal session. There would be constant discussion—

JUDGE BIGGS: Mr. O'Donnell, this seems to be de minimus on this issue. What if the committee did have informal meetings? We are interested in what the committee did.

MR. O'DONNELL: Yes, sir.

BY MR. O'DONNELL:

Q. Mr. Wilson, would you tell us what the committee did?

JUDGE BIGGS: Before we get to that point, let's see how the committee did it.

BY JUDGE BIGGS:

Q. Were minutes kept of your meetings? A. Your Honor, at the first meeting—all of our formal meetings were. They were open to the members of the public, press, representatives from radio stations, they were attendants at such, and while we may not have had space enough if there was a mass of the general public who wanted
536 to come to these meetings, to the extent that we had space or room enough they were welcome.

Q. Were there minutes kept? A. At the first session one of the members from the radio station had a tape recorder. We secured that tape and had it transcribed by a Court Reporter. At the other sessions we had a Court Reporter at all times present.

Q. Has there been a transcription made? A. Yes, sir.

Q. Where is that transcription? A. I secured it from the Governor's office. We returned it to the parent committee when we made our report. I have it here.

JUDGE BIGGS: It would seem to me that the very best evidence of what transpired is this record which the chairman of this committee has here today. I assume there will be no objection to it except the usual one that Mr. Theisen has going to this whole line of testimony on the grounds of relevancy, but certainly this would be the best evidence of what did transpire before the committee. Why do you not offer it?

MR. O'DONNELL: I intended to offer it, your Honor. I

wanted to briefly refer to the meetings, luncheons, dinners, that were not on the record, get the high points of
537 the discussion, and then I intended to offer the minutes.

JUDGE BIGGS: Well, of course, how can this witness testify there except by hearsay?

MR. O'DONNELL: He was present, your Honor.

JUDGE BIGGS: Yes, but it is hearsay nonetheless.

MR. O'DONNELL: I would disagree with your Honor.

JUDGE BIGGS: Suppose he reports what X said to him, is that not hearsay? Or would you have him give only his side of the conversation?

MR. BOVE: There are exceptions to the hearsay rule.

JUDGE BIGGS: How do you bring this into the exception?

MR. BOVE: One of the exceptions is contemporaneous and spontaneous statements of the participants in a matter.

JUDGE BIGGS: Over how long a period were these meetings?

MR. O'DONNELL: Several weeks, your Honor.

MR. BOVE: They were several weeks.

JUDGE BIGGS: Do you think that would come within the rule of contemporaneous? Probably you mean really the rule of res gestae.

MR. BOVE: Yes. Sometimes the rule is described as the rule of res gestae, sometimes the other way.
538 Another exception to the hearsay rule is the exception of operative words, and depending upon the witness' answer to the question, some of what he had to say might be within the operative word exception to the hearsay rule.

JUDGE BIGGS: The exception to the operative word rule is exceptionally operatively difficult to apply in a courtroom. Some courts do not make any use of it at all. What is the Delaware rule in respect to it?

MR. BOVE: I think operative words are admissible in Delaware, sir. I do not have any authority off the top of my head.

JUDGE BIGGS: Of course, the rule of the Federal Court, which is the most liberal, would be employed. We know that.

MR. BOVE: Yes.

JUDGE BIGGS: I have great hesitancy in getting into conversations with only one party to the conversation present. I am sure that Mr. Wilson's memory is as accurate as that of most lawyers, and is probably more accurate than anything I could possibly develop under the circumstances.

It seems to me to be somewhat difficult to bring this into a well-recognized exception to the hearsay rule on the grounds of res gestae.

Do you want to be heard on this?

539 MR. THEISEN: I would think the rule of res gestae is perfectly clear, your Honor; it has got to be a statement made contemporaneously with the act; it has got to be the utterance of the second. It does not extend beyond that. It has got to be very, very closely associated with the act.

The reason it is admitted as an exception is because of the spontaneity of the words that are used in conjunction with the act.

JUDGE BIGGS: What is the act here, would you say?

MR. THEISEN: A very casual conversation. I do not think it has any application at all.

MR. O'DONNELL: Your Honor, I feel this matter is not within the hearsay rule so we did not have to turn to any exception to it. The reason it is not is because you may have a verbal occurrence or you may have a physical occurrence.

John may testify that he saw Mary pick the book up. John may also testify that he heard Mary say, "Ouch."

That is all we are asking Mr. Wilson to do. He cannot testify that Mary told him when the book fell on her foot she said, "Ouch," but he can testify as to what he saw and heard. He can testify, "I saw the cannon go

off, and I heard the noise from it." That is not within the hearsay rule.

The hearsay rule is where you are testifying as to information you have received from a third person.

540 When you are testifying with respect to information that you saw, or heard, or felt yourself you are not testifying with respect to any testimony that is within the hearsay rule.

Mr. Wilson was present when these things transpired. He saw certain things happen. He may have felt certain things happen. He heard certain things. We are only asking him about those things that he heard himself, and those things that he did himself.

JUDGE BIGGS: You have not yet disclosed the purpose for which you are offering this.

MR. O'DONNELL: I am offering this testimony to help in the development of the legislative intent, to show you the legislative history of the subject that is before you, the constitutionality of House Bill 574; as subsequently adopted as House Bill 3.

JUDGE BIGGS: It is your view the oral and informal meetings of which no record was kept are the equivalent of what might be termed legislative history of the way that is provided, for example, in respect to acts of Congress, where you have committee reports, or, on very rare occasions, speeches from the floor of the—

MR. O'DONNELL: Exactly. When you have the record of the testimony of witnesses before the various committees in analyzing legislative history the courts examine

541 the history of the hearings on the bill before the various committees, "Mr. Jones spoke." They have a stenographic transcript of what he said.

JUDGE BIGGS: They do not have before the House or the Senate, either, the, so to speak, executive sessions of the committee. It is true you have the testimony of witnesses before the committee and the sub-committee, usually the sub-committee. They are part of the—

frequently part of the legislative history, but what you are asking here are deliberations.

Now, this is pretty far removed physically, at least, and I think also what you might term mentally, from the actual deliberations of the legislature itself whereby it enacted the proposal which was embodied in House Bill 574, and I assume accepted the proposal in HB 3.

I think we are allowing a great deal of latitude, a great deal of latitude, in permitting the transcripts. I am not at all certain that we should permit these, and we are taking them subject to a motion to strike.

But oral conversations informally between members of the committee seem to me to be too far removed from the scene of the action of the legislature to be admissible.

MR. O'DONNELL: Your Honor, I would—

JUDGE BIGGS: Just a second, please. (Pause)

542 We have stated our view. I have stated my view here. Now, you have a question pending. What is it, please? Will you restate it?

MR. O'DONNELL: I will endeavor to.

JUDGE BIGGS: Do your best.

BY MR. O'DONNELL:

Q. I believe that I had just asked you, Mr. Wilson, if you would tell us what you heard, and what you did at the informal meetings of the Governor's sub-committee.

MR. THEISEN: I object, your Honor.

JUDGE BIGGS: Just a moment. That is exactly the point at which I thought we were.

MR. THEISEN: Yes.

JUDGE BIGGS: The Court is divided on this issue. I think it would be desirable, from the Court's point of view, since one of us at least is of the view that it should be admitted, to admit it subject to the same ruling, and we will therefore permit the question.

Judge Layton desires to have it appear on the record that he votes against the admission of the question, and,

of course, the answer thereto, I assume, if it is responsive. Let the record so show.

THE WITNESS: Your Honors, since we do not have the Reporter here, my recollection was that I was in the
543 midst of explaining with some detail what informal discussions took place.

JUDGE BIGGS: What we would like to have is, if you are going to be permitted to testify on this point, Mr. Wilson, is the substance of what you said. Go ahead and develop it in your own way.

We must get through here on this issue this afternoon, if possible; if necessary we will go over on this, but time is going along.

THE WITNESS: Let me just explain that before the formal sessions, during recesses and during meals, there would be informal discussions among the members of the committee.

At the first session of July 12, 1962, the tape ran out on the tape recorder so that the transcription of that is not complete towards the end of the session.

Let me also explain that at the meeting preliminary to making our report to the parent committee on July 23, 1962, there were no minutes kept of that. There were no minutes kept of our verbal report or explanation to the parent committee at the Governor's office on that occasion.

Following that when the legislature was convened, members of the committee were called into the various caucuses of the parties to explain to them in some detail the meaning of this report, the discussions that had taken place.

544 We also appeared before the Houses of the legislature. I am speaking of the last session of the legislature.

So that the work of the committee was not completed, or at least my work as chairman was not completed until the last session of the legislature gave its final consideration to this report and the legislation which accompanied it.

BY MR. O'DONNELL:

Q. What, if anything, did the Governor's whole committee do with respect to the report? A. The Governor's Committee accepted the report and approved it. It was the consensus there that all those who were members of the Governor's Committee would urge its adoption and enactment by the General Assembly.

The Governor's parent committee was composed of the political leaders of the two major political parties at the State level, at the County level, and also the leaders of the two parties in the General Assembly, in both Houses of the General Assembly.

Q. Mr. Wilson, in the deliberations of the committee was the so-called Federal plan discussed? A. It was.

545 Q. Mr. Wilson, referring only to non-recorded meetings, will you please tell the Court what transpired, and what issues were discussed?

JUDGE BIGGS: First what issues were discussed at the non-recorded meetings, put it in that form.

BY MR. O'DONNELL:

Q. Please tell the Court what issues were discussed at non-recorded meetings. A. Your Honors, this is going to be rather difficult for me to weed the chaff from the grain here for this reason, I received a call yesterday that I would be asked to come here and testify tomorrow. I was occupied with other things, but I did manage to go to Dover and pick up the original transcripts and the original
546 report from the Governor's office, with the thought in mind that I would devote today to preparing myself more fully, and to refresh myself upon what transpired last summer. Then last night I received another telephone call saying that the Court would like to have me—

JUDGE BIGGS: Very well. The substance of what you are saying, Mr. Wilson, is you cannot answer the question in that form. You may rephrase it.

BY MR. O'DONNELL:

Q. Will you tell the Court what issues were discussed by the committee?

JUDGE BIGGS: We understand, Mr. Theisen, your objection goes to this full line.

THE WITNESS: We first started our discussions with respect to asking each member—This is the plan that I formulated for the deliberations of the committee—to ask each member what their conception was as far as our problem was concerned; what we were there for.

After each member of the committee had given his version of it we came to a conclusion as to the purposes for which our Bipartisan Committee was formed. We determined there were two purposes; one was to formulate a plan of reapportionment which we felt would meet the test of such guide lines as there were in the Supreme Court decision of Baker versus Carr, and at the same time
547 the plan would, from a practical point of view, have a reasonable expectation of being enacted by the General Assembly.

We conceived it was our responsibility as a bipartisan political—and from a territorial point of view—to try to make a plan which would have our unanimous endorsement.

The second part was for us to consider whether or not the State of Delaware should have a constitutional convention to deal with the problem of reapportionment, and when that constitutional convention should be convened.

JUDGE BIGGS: I see no reason for including any further testimony about the issue of the constitutional convention, Mr. O'Donnell, do you?

MR. O'DONNELL: No, I do not.

JUDGE BIGGS: Very well, then, I will ask Mr. Wilson if you will be good enough to exclude that, exclude that issue from the testimony hereafter.

THE WITNESS: I shall be very happy to.

MR. THEISEN: Your Honors, I trust that in this ruling or request that you are not thereby precluding me from cross-examining the witness on the package deal that was made.

JUDGE BIGGS: We will rule on your questions as they come up, Mr. Theisen.

Do you object to the Court's ruling on this?

MR. THEISEN: Well, sir, I expect to go into the
548 question of the constitutional convention.

JUDGE BIGGS: I am asking you one question. Do you object to the Court's ruling on this?

MR. THEISEN: Only if the Court thereby is precluding me—

JUDGE BIGGS: Not any "onlys" or "ifs". The Court has made a ruling. Do you object to it?

MR. THEISEN: Yes.

JUDGE BIGGS: Very well. Note the objection. The objection is overruled.

MR. THEISEN: Thank you.

JUDGE BIGGS: You are now free to conduct yourself according to the rules of evidence.

THE WITNESS: We then started to develop the plan of reapportionment on a step-by-step basis. Let me explain that very briefly.

If we first started with the geographical composition of the Senate that we contemplated, and this was open for discussion, and the method that I used as chairman was, first of all, to call upon each member of the committee, including myself, to give a preliminary discussion as to how he thought this particular proposition should be solved, and went completely around the table.

JUDGE BIGGS: Mr. O'Donnell, I do not doubt that
549 this committee proceeded with its duties conscientiously. I would like to get to the point, if we are going to reach that point of the substance of what he is doing.

By Mr. O'Donnell:

Q. Mr. Wilson, will you address yourself specifically to the issues? A. Yes. The first thing we considered was the formation of the Senate, and in that we ultimately arrived at the conclusion that we should adopt the so-called Federal system as far as the upper House was concerned, and that is to say that the historic three counties of Delaware would each have equal representation in the Senate, and that each of those counties would have seven members of the Senate.

We then entered into a discussion as to the formation of the House. There we endeavored to come up with a plan which we felt would give due consideration to a House upon a population basis as distinct from the Senate on a geographical basis.

We took this step by step.

As far as the House was concerned we first resolved that each of the existing representative districts of the State should be preserved, and that each of those representative districts should have at least one Representative in the House. This was in keeping with the Federal system where even the smallest state, population-wise, has at least one Representative in the House of Representatives.

We then discussed what would be the population factors by which a given existing historic representative district would be entitled to additional representation in the House. We came up with the factor that for each additional 15,000 in population over the first 15,000, or for an additional major fraction of each additional 15,000, that particular representative district would be entitled to an additional Representative.

This would mean that when a particular representative district reached 22,501 in population that thereupon it would be entitled to two representative districts, which would mean that the populaton factor would be in the neighborhood of eleven or twelve thousand. This would

continue until it reached 37,500 and then each district would be entitled to a third, and this would mean a population factor of about somewheres around 12,000, and so on, as each additional 15,000 or major fraction thereof was added to the population of that particular district.

We then turned to the question of how these additional Representatives would be elected from a given representative district, and there again we undertook to follow the Federal system by drawing the analogy between the existing representative districts and the existing states of the Federal Union, which is to say that at the end of each census that given representative district if it were entitled to, say, a total of three, would be resubdivided into three representative districts, and from each of those subdivided representative districts there would be elected one Representative to the General Assembly until the next decennial census when the same system would be gone through again.

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JUDGE BIGGS: At this point let us get into the record, subject to Mr. Theisen's objection, of course, the fact that the recommendations of this committee were accepted, as I remember it, in toto and that the report of this committee became a draft bill.

BY JUDGE BIGGS:

Q. I believe you drafted a bill, did you not? A. Yes, sir.

MR. O'DONNELL: It was appended to the report.

JUDGE BIGGS: The appendix to the report was H.B. 574 and also H.B. 3; is that correct?

MR. O'DONNELL: That is my understanding, sir.

JUDGE BIGGS: I am leaving out of this at the present time the rest of the report which related to the proposed calling of the Constitutional Convention. We may have to deal with that later.

552 BY JUDGE LAYTON:

Q. Do the minutes which have been transcribed reflect what you have testified to for the past five minutes or so? A. I believe they do substantially.

JUDGE LAYTON: Very well.

BY MR. O'DONNELL:

Q. Mr. Wilson, where did the suggestion of using the Federal analogy come from?

JUDGE BIGGS: Why is that important?

MR. THEISEN: I object.

MR. O'DONNELL: We feel it is important, your Honor, to show that a member from the most populous area of the State has suggested this plan.

JUDGE BIGGS: That in my opinion is too far afield.

Do you agree on this, Judge Layton and Judge Wright?

JUDGE LAYTON: Yes.

JUDGE WRIGHT: Yes.

JUDGE BIGGS: Let the question be stricken out.

MR. O'DONNELL: Would you indulge me a moment, please, to consult with counsel?

JUDGE BIGGS: Certainly.

MR. O'DONNELL: Your Honor, we believe it is important particularly with respect to a question of relief for this Court to hear this witness' analysis of the Court's

553 plan as included in your tentative suggested plan, and we would like to ask him some questions predicated upon the plaintiffs' plan. I am explaining this in advance so Mr. Theisen will have an opportunity to object.

JUDGE BIGGS: You say you think it is important to have this witness testify as to what, the feasibility of the Court's plan?

MR. O'DONNELL: Yes, sir.

JUDGE BIGGS: And also the feasibility of the plaintiffs' plan?

MR. O'DONNELL: That is right.

JUDGE BIGGS: In what respect?

MR. O'DONNELL: In all respects, your Honor.

JUDGE BIGGS: Well, does he qualify as an expert in respect to this?

MR. O'DONNELL: We feel that based upon his study and his experience in politics in Delaware and in particular his study on this committee he is qualified, sir, to so testify.

JUDGE BIGGS: Do you concede or do you not concede that his qualifications would have to be those of an expert?

MR. O'DONNELL: Yes, sir, I would concede that.

JUDGE BIGGS: Do you all concede that on this side?

MR. TERRY: No, I do not concede that.

554 JUDGE BIGGS: You think that any citizen may testify as to that?

MR. TERRY: Yes.

JUDGE BIGGS: What is your position, Mr. Bove?

MR. BOVE: I don't think that he has to be an expert perhaps in the sense of the word that your Honor is using it. I do think that based upon his experience and his dealing with various people throughout the State for the number of years that he has testified when we went through his qualifications that he is expert enough for the purpose of answering questions on these two plans. I think that is particularly material with respect to what, if any relief the Court will afford the plaintiffs in this litigation.

JUDGE BIGGS: Mr. Hughes, what is your position?

MR. HUGHES: My position, your Honor, is that this is not the kind of opinion evidence that requires qualification as an expert for the witness to give. I think it is the kind of thing that a citizen interested in political matters is qualified to express his views on.

JUDGE BIGGS: Do you plan to introduce any other testimony than this one witness on this subject?

MR. HUGHES: We do not plan to.

JUDGE BIGGS: Gentlemen, despite the provisions of the pre-trial order we have let you go into this in this
555 respect with this witness, but I did not realize that he was going to testify as to this and no statement

was made in respect to this yesterday that I can recall, Mr. O'Donnell. Did you make any?

MR. O'DONNELL: No, sir.

JUDGE BIGGS: That he was to testify as an expert on what the effect of the plaintiffs' plan or of the very tentative project called the Court's plan would be.

MR. O'DONNELL: I didn't make any such statement and I didn't hear anybody else make any.

JUDGE BIGGS: No, I don't think any such statement was made.

MR. BOVE: None was made, sir.

MR. THEISEN: Your Honor, obviously I would object to any such testimony. My grounds are that the defendants' own witness, Professor Pollock, has been here as an expert. We have produced two experts. All the experts have agreed that there are certain factors that they as political scientists take into account when they evaluate any of these plans. Goodness knows, I have, I think, probably fifteen or twenty people who have been working on reapportionment in this State for ten years that I don't think I could put on the stand, but I would love to put them on if we are going to listen to testimony of this sort.

556 JUDGE BIGGS: The thing that disturbs me a great deal about that is this: Mr. Theisen's experts have departed the trial.

MR. THEISEN: Yes, sir.

JUDGE BIGGS: This is a situation which arises quite frequently in cases not involving this type of litigation, but, for example, in patent litigation where someone testifies in respect to the working of a chemical formula and an expert stands by and makes notes and hears the testimony and is there for the purpose of rebuttal.

MR. THEISEN: Precisely.

JUDGE BIGGS: Mr. Theisen's witnesses in this respect are not here. It seems to me that if we are to embark on the issue of a member of the Commission who prepared a plan to testify as to what he thinks would be the result of a

plan which has not been ordered by the Court or may never be ordered by the Court, even on that ground alone it is pretty tenuous. But quite aside from that, Mr. Wilson, despite his eminence in the community, is not a political scientist and he has no degree or standing as such. As for the effects it seems to me this is something which a political scientist would require prescience, as Mr. Pollock, your own witness, very candidly stated yesterday.

I think we had better consider this matter. We
557 are up to 3 o'clock and it is time for a recess. We will stand in recess for about ten minutes.

(At this point a brief recess was taken.)

JUDGE BIGGS: Gentlemen, we apologize for the delay. I think it must be apparent that the Court had a number of points which it had to discuss.

Mr. O'Donnell, how many witnesses do you plan to offer on this point?

MR. O'DONNELL: No other witnesses, sir, and I would like to withdraw the question, the last question which was asked.

JUDGE BIGGS: Very well, you may withdraw it.

MR. O'DONNELL: I wonder if I might advise the Court at this time that while Mr. Wilson was not listed as a witness, he has been called because I believe at the Court's suggestion it was announced that a witness would be called to explain the plaintiffs' plan to the Court. That was set up for tomorrow. We had not planned to call Mr. Wilson, but when we learned that a witness on behalf of the palintiffs would be called to explain the plaintiffs' plan, we thought it advisable to call a witness to assist the Court in explaining House Bill 574 to the Court, and that is why Mr. Wilson was called, even though he was not on the pre-trial order, as I understand, nor was the
558 other witness—and I am not objecting to the other witness being called to explain the plan to the Court. It is at the Court's request.

But that is the reason why we decided to call Mr. Wilson even though his name was not listed here.

JUDGE BIGGS: My recollection is not sufficiently accurate to recall precisely what has occurred in the last few days. I think everything of importance is on the record and can be verified in that respect. However, it seems to me that the explanation that you have made is at least satisfactory to me.

Now, let us see what the next question is.

BY MR. O'DONNELL:

Q. Mr. Wilson, would you tell the Court, please, why a unit of 15,000 was picked by the committee?

JUDGE BIGGS: Let me make one thing clear here. You really in this respect are calling Mr. Wilson as an expert—

MR. O'DONNELL: I did not intend to, your Honor. I intended to have him advise the Court why the committee picked it in their deliberations, not as a philosophical matter, as a political scientist.

JUDGE BIGGS: Is this as to 574?

MR. O'DONNELL: Yes.

JUDGE BIGGS: Why they picked the number?

559 MR. O'DONNELL: The number 15,000.

JUDGE BIGGS: Mr. Theisen?

MR. THEISEN: It is subject, I trust, to my former objection?

JUDGE BIGGS: Certainly, all of this line goes to your former objection.

BY MR. O'DONNELL:

Q. Will you answer that question if you can, Mr. Wilson?

A. There were a number of practical problems with which the committee necessarily had to deal. We considered 10,000, the so-called ideal of 12,750-odd, 15,000, 16,000, 20,000, as the population growth factor for Delaware. We finally concluded that 15,000, or a major portion thereof, was in our opinion the best factor to be applied to this State for a number of reasons.

The first reason was the question of, How large did you want your House of Representatives to be in the foreseeable future? With this major fraction thereof, as the population continued to increase there is a gradual slowing down in the ultimate divided factor, if you will follow my formula, or the formula which we adopted, in the sense that if you get to 22,500, divide that by two, you come up with 11,250. When you get to 37,500 and divide that
560 by three, you come up with 12,000. When you get to 52,500 and divide it by four, you come up again with a gradual slowing down in the over-all size of your House.

If you take a factor of less than 15,000, you run into a problem of housing, and you also run into a problem of what constitutes in a relatively small geographical state such as ours what constitutes a House which can give voice to all segments of our society and all the customs and practices that have grown up here in a rather ancient state so far as the history of the United States is concerned. This to us was of considerable importance, not to make your House too large and not to have a growth factor which would compound the size of the House too rapidly but at the same time, as far as the House of Representatives may be concerned, to have it, as we felt, rationally related to population growth.

Now, you can talk and the experts can talk all they want to about it, shall it be 7,500, shall it be 10,000, as far as the first Representative is concerned and as far as consolidating districts may be concerned, or subdividing districts, existing historic districts, may be concerned. But the point is this: We are told—and I think this is a matter of record that anyone can read in any number of pamphlets or journals of those who have studied it—that this world of ours, and particularly the United States, and with
561 great emphasis on the State of Delaware, is going through a rapid population climb. The truth of the matter is by the year 2000 the population of the world is

going to double itself. There is going to be more population produced in these few short years than has been produced from the time of Christ up until the present time. Now, this applies to Delaware. The prediction is that this entire State will become a part of an intense growth area extending all the way from Boston down as far as Washington.

The population growth factors and predictions for the State of Delaware are just overwhelming; so that even though now you may have a district which has, as I understand it, in New Castle County under our proposed plan represnting 1,600, and possibly one in Kent and Sussex Counties representing 2,600, the Committee felt, and I think this is true, that this is going to become moot in a matter of about ten years. I would hazard to predict within the next ten or twelve or fifteen years every one of these existing historic representative districts in this State is going to have at least 15,000 population. This is just where the chart is pointing. It is pointing right towards it; and so it is that all this discussion, we felt, as to whether or not you should now subdivide or whether you should now consolidate was going to become moot in a very short period of time, and the question was to predict—I mean not to predict but to pick a representative quotient of 15,000 or major fraction thereof, which would keep this thing in balance once every one of the representative districts reached or almost reached the initial point of 15,000, which we felt was going to be in a very short foreseeable time.

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There were other things that would concern us, that is, the fact that except as during the period of the last Constitution, which is 1897, I believe, up until the present time this State either as a colony or a state had never concerned itself with the problem of apportioning its Representatives in the General Assembly in either House on a population basis. So it was that from the early part of the seventeen hundreds up until that time each of the counties

had an equal representation in both Houses of the General Assembly, and Delaware had come quite a long ways under this particular system.

True enough the Constitutional Convention which adopted our present Constitution did give some measure of the population factor to the make-up of the two Houses, and so it is that we felt that this should go forward one more step with regard to one of those Houses.

When you come to consolidating districts, or sub-
563 dividing districts, again we were a little bit fearful of what the so-called experts might do, that is to say, someone who sits down with a bunch of figures and a map, such as this, and then draws some lines on it, because we understood the Supreme Court to say and to recognize that each state should, in apportioning its legislature, be concerned with the interests, the customs, the habits, and the practice of its people.

Now, it is all very well to say, "We will take two representative districts in Sussex County and we will put them together and come up with 10,000," but is it going to work?

Mr. Theisen: If your Honors please, this testimony has been fraught with all kinds of estimates, all kinds of opinions of the witness, not relating, it seems to me, one whit to the question that is asked, and I certainly don't think he has been offered as an expert on population expansion, and if he had been I certainly would have objected, yet his testimony is full of it.

I should like at some point to register an objection.

Judge Biggs: You have registered your objection. Now, I think some of what Mr. Theisen says, even within the broad area we have allowed the witness, is somewhat
564 too broad. He stated his reasons.

Are there any other reasons?

By Mr. O'Donnell:

Q. Mr. Wilson, will you answer the Court's question, please? A. Yes.

Q. Judge Biggs asked are there any other reasons why 15,000 was picked as the unit of measurement? A. I think that I have covered the reasons.

MR. O'DONNELL: At this time, your Honors, I should like to offer, I believe, as Defendants' Exhibit 1 the volumes which have been marked "Sub-Committee Meetings."

JUDGE BIGGS: Why are they marked "Sub-Committee"?

MR. O'DONNELL: It was the sub-committee of the Governor's whole committee.

JUDGE BIGGS: I understand that. These are the meetings, however, that Mr. Wilson—of the sub-committee which Mr. Wilson was chairman of.

MR. O'DONNELL: That is so, your Honor.

JUDGE BIGGS: Thank you.

MR. O'DONNELL: Three volumes. Your Honors, I would like to offer these three as one exhibit. I think I had better take these markers out of here, if you will bear with me.

565 JUDGE WRIGHT: Maybe Mr. Wilson needs those markers. Let's leave those in there.

JUDGE BIGGS: Mr. Theisen unquestionably makes the same objection.

MR. THEISEN: Yes. I make that objection, plus the one that the witness supplied himself, namely, that they are not complete.

JUDGE BIGGS: Very well. We will receive them subject to a motion to strike.

THE CLERK: The documents are marked Defendants' Exhibit 1.

JUDGE BIGGS: Anything else?

MR. O'DONNELL: Excuse me. We rest.

JUDGE BIGGS: Just a moment, please, before they are marked. Just a moment. Apparently my brothers and I are not in complete accord.

Let the exhibit be marked and received subject to the Court's ruling, that is to say, subject to Mr. Theisen's objection and motion to strike.

(Thereupon three volumes of the sub-committee hearings were received in evidence and marked "Defendants' Exhibit No. 1.")

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567 CROSS-EXAMINATION

BY MR. THEISEN:

Q. Mr. Wilson, when were you appointed to the Bipartisan Committee? A. I can say sometime prior to July 12, 1962, if that is sufficient. I can try to pinpoint it more definitely if you would like me to from my file.

Q. Is that the closest you can come to it now, sometime before July 12th? A. Give me a moment and I will see if I can hit the target closer for you.

Q. All right; fine. A. On July 5th I wrote Mr. Potter, "I see by the News Journal papers that my name will be presented to the Governor as a member of the Bipartisan Committee." So my first knowledge some through the News Journal papers about July 3rd or 5th.

Q. Would you mind answering my question, please, Mr. Wilson? When were you appointed to the committee?

A. That is the best answer I can give you, Mr.
568 Theisen. You will have to be content with it.

Q. Did you get a formal designation as a member of this committee? A. No, sir.

Q. Do you have any present recollection as to how you were appointed to this committee other than by noting it in the newspapers? A. Yes. The Chairman of the State Democratic Committee called me on the phone and asked me if I would serve.

Q. Was that after you had written your letter of July 5th? A. I have no recollection, sir.

Q. You don't know whether you wrote the letter first or received Mr. Potter's call or Mr. Conaway's call, rather, first? A. My best recollection would be that I received his call after I had read this in the News Journal papers.

Q. Whose call? A. Mr. Conaway's.

Q. After you had received, as you now think, a telephone call from Mr. Conaway and before you met on July 12th for the first organization meeting what did you do with regard to reapportionment if anything? A. Well, I wrote to Mr. Potter, because the same newspaper report
569 disclosed that he had discussed the action taken by the Federal District Court in Wisconsin with respect to reapportionment. He had apparently discussed this, according to the newspaper report, at the parent committee or the Governor's Committee meeting; so I asked him to furnish me with all the material he had on the Wisconsin case.

At that time I had a law clerk, and I immediately assigned him to the task of weeding out all reapportionment suits that could be found in the United States Law Week.

On the same day I wrote to the Bureau of National Affairs at Washington, D. C. and asked them for two additional copies of Volume 30 No. 27 of the Supreme Court's opinion in the United States Law Week; and, as I recall, I read somewheres near a thousand pages of court decisions, particularly including Baker versus Carr, which was 100 pages long, and tried to make some digest so that I could get a thoroughgoing understanding as far as I was able of the amount of discretion within which the committee could operate.

Q. When did you write this second letter to Mr. Potter? A. That was the same letter.

Q. Oh, the same letter? A. Yes.

Q. Did you thereafter have a running correspondence with Mr. Potter or with anyone else with regard to
570 reapportionment? A. No, sir. I think the Committee of 39 or some such committee up here would send me running material of their views, and I also got old material from other people who had had views on the subject. I got hold of a copy of the complaint filed by you, I believe, in this civil action so that I could get an understanding of that.

Mr. Clement Wood volunteered on July 9th to send me his notes that he took down when General Cox spoke at York Harbor, Maine on the subject of reapportionment.

Q. Mr. Wilson, I think we are running very short of time and I don't want to be limited in my examination. Do you suppose you could shorten your answers a little bit for me? A. Well, this is the general way I went about preparing myself for the meetings of the committee.

Q. You have been referring now for some time to a series of letters and documents in your hand. Can you identify them? A. This is my own office file, which is File No. 1872, on Delaware reapportionment, which my secretary started for me as soon as I understood that I was to be a member of this committee.

Q. Do you consider that file to be confidential?

571 A. No.

Q. Would you mind having it marked in this case? A. May I thumb through it to see if there is any particular item that I feel is confidential?

Q. Surely. A. I can't recall any, but I don't want to violate anyone's confidence before I turn this file over to you.

There is nothing confidential in here, sir.

Mr. Theisen: May I ask that this be marked?

Judge Biggs: Marked for what purpose?

Mr. Theisen: I would like to examine it, your Honor.

Judge Biggs: For identification only, you mean?

Mr. Theisen: Yes.

Judge Biggs: Very well. Let it be marked for identification.

(The file on Mr. Wilson was marked "Plaintiffs' Exhibit No. 1 for Identification.")

By Mr. Theisen:

Q. Do you need this file when you testify? A. That depends on your questions.

Q. All right. Mr. Wilson, did you speak with the Gov-

ernor, for example, before the meeting of July 12th? A. I have no present recollection—I will put it the other
572 way. I do have a present recollection of talking to him on the telephone on one or two occasions before I attended the first meeting.

Q. Did you get the Governor's views on reapportionment? A. That he is in favor of it.

Q. Did the Governor express any views with regard to population being used as a factor? A. I truly do not recall.

. . . . . .

573 Q. Did the Governor give you his views with regard to population, if you remember? A. Do you mean by that a population factor that we should consider?

Q. Yes. A. No, he did not.

Q. When you met the first time on July 12, 1962, you met, as I understand it— A. May I amend that answer, or let me put it this way: Did you mean before the committee met, because after the committee met the Governor was heartily in favor of this population factor. He thought this was a terrific plan.

Q. My question of course was before you met. A. Well, I just wanted to be sure.

Q. And your answer is no? A. He did not, before.
574 I thought that is what you meant.

Q. Now, the first time you met, as I understand it, was at the Highway Commission Office at the bridge, is that correct? A. Yes, sir.

Q. That was July 12, 1962? A. Yes, that is correct. It will show on the minutes, but I believe that is correct.

Q. Well, of course I didn't have the minutes available but I do have the reports of the newspaper accounts of this, and as I understand it, on the first meeting the Bipartisan Committee agreed on a House based upon population. Am I correct in that? A. Would you give me the second volume to refresh my recollection and I can answer you.

(Mr. Theisen handed the volume to the witness.)

A. Mr. Schmittinger, our secretary, also took notes, and at the beginning of each subsequent meeting he would refresh the committee on what had taken place at the last meeting. At the outset of the meeting on July 17, 1962, there is a summary by Mr. Schmittinger as to what we accomplished at the first meeting, found on pages 98 and 99—do you want me to read it or let the record stand—

575 Q. I think it is very simple. Did you or did you not at that first meeting agree on a House based upon population? A. No, sir.

Q. You did not? A. We got this far: The fifth principle was that the lower House be apportioned on a general population basis as follows: The present 35 Representative districts as presently constituted shall be entitled to a minimum of one Representative.

I am sorry, that motion was never actually voted upon. We discussed that proposition but we never got to a vote on it at the first meeting.

Q. Was this meeting an open meeting? A. Yes. There were members of the press present, members from the radio station, or representatives from the radio station, and we did not advertise that the public was invited but if any member of the public came and was curious and interested, we would be happy to have them sit and listen.

Q. Do you know a political writer by the name of Jack Russell? A. Yes.

Q. Was he present at that first meeting to your recollection? A. I can't recall. There were various po-

576 litical writers present at various meetings.

Q. I hand you a newspaper article entitled, "Reapportionment" with the headline "Ten More House Seats, All in North, Proposed," dated in ink, Journal, July 13, 1962, and ask you if that refreshes your recollection as to what happened at the organization meeting? A. No, sir, I stand by my prior testimony.

Q. Do you have any idea where Mr. Russell would get these figures from? A. My prior testimony was, reading

from the minutes, that these matters were discussed but no vote was taken. There was preliminary discussion of these matters but no vote was taken, sir.

Q. All right, then, there was a preliminary discussion. When did this preliminary discussion become a final proposal? A. Now, it is going to take me some time to answer this particular question because, as I explained in some of my prior answers, we took this thing step by step, proposition by proposition, and in this way we were able to successfully hammer out a unanimous report.

Q. Would it help you, Mr. Wilson, if I started off with your first step then? Your first step, as you testified on direct examination, was that you started with a geographical content of the Senate, is that correct? A. The
577 first step was we unanimously endorsed the principle of two Houses; a bicameral system, for Delaware.

The second step was that the upper House, or Senate, should be apportioned on some rational geographical basis.

The third step was that the geographical basis be the three counties with seven Senators from each county.

The fourth step was that the present historic Senatorial districts shall be preserved.

Now, the fifth matter that we discussed at the first meeting was whether or not the lower House should be apportioned on a general population basis and whether or not the present 35 Representative districts should be preserved. Also we discussed population factor figures of 20,000 and 15,000, and we took no votes on those.

Q. Mr. Wilson, my question was, would it help you any if I took what I consider to be your first step, as I understood it, starting with the geographical content of the Senate. Would it help you any if we started on that basis? A. The only thing that would help me as far as accuracy is concerned would be to thumb through these volumes and to define the very moment and the very language of each principle that we adopted. This can be done. I see no—

well—and this will disclose to you how we took this thing step by step. I can dig it out—

578 Q. Is it all set forth in the minutes that you are referring to? A. Yes, sir. The only minutes that are missing are part of the minutes of the first meeting when the tape recorder ran out of tape.

Q. Let me ask you this: Do you have contained in those minutes all of the material that was used by the committee in arriving at the decisions, or are there references to the material that you used in arriving at your conclusions? A. There would be references. I would say that each member of the committee assembled a considerable mass of material themselves, just as I did in my own files, and some of this, when there would be discussion, a committee member would refer to certain material that he had observed and read, and we would have the benefit of that material.

Q. More specifically, is there any reference in these documents that you produced, the minutes, to a consideration of the population of the State of Delaware by any census figures? A. Oh, yes, 1960.

Q. Fine. Now, what did those population figures reveal with regard to the population of the State of Delaware, county by county? A. I believe I have it in

579 that folder on the basis of district by district.

(Mr. Theisen handed the folder to the witness.)

Q. Did the committee discuss the figures as they related to county by county? A. The discussion would come up in this way: We had the representative districts because we were concerned with the population factor that we were going to use in the various representative districts; we were going to apportion it on a basis of population, some population factor.

JUDGE BIGGS: You mean them?

THE WITNESS: Them—the House, I mean, them, as far as the districts were concerned.

So as we would discuss each one of these various population factors we had under consideration somebody would make a notation as to what the make-up of the House would be under this population factor.

By Mr. Theisen:

Q. Well, we are talking now, I thought, Mr. Wilson, about the make-up of the Senate, and I asked you what population figures you had before you and which populations you applied as you talked and decided about representation in the Senate? A. None.

Q. You mean that the committee didn't consider
580 population at all in arriving at an enlarged Senate?

A. Right off the bat the representative from Wilmington, at the very beginning, said that he felt there should be a Senate composed of equal representation from each county on a geographical basis, and in a very short discussion the committee approved this in principle, and so since we had then and there decided in principle that the make-up of the Senate would be on the Federal system and would be represented on a geographical basis and not on an apportioned population basis, we were not concerned with population, sir.

Q. Now, there are several questions I would like to ask you about that, and the first is: The representative from Wilmington that you refer to, of course, is not one of the plaintiffs in this action, was he? A. I do not know who the plaintiffs in this action are. I can tell you who the representative was, that it is Mr. Poppiti.

Q. Mr. Poppiti made the suggestion, did he not? A. Yes.

Q. As a matter of fact, you know he is not a plaintiff in these proceedings, do you not? A. I have never seen a complete list of plaintiffs.

Q. As I understand what you worked out in House Bill 574 was that you would keep the Senatorial districts
581 in New Castle County, you would add two in Kent, and two in Sussex, and you would add two in each

of the lower counties by dividing the existing counties into districts, you took half of the—you took five districts from each county, did you not, or took ten districts, I am sorry, you gave five to each district in each county? A. That is right, on an east-west division.

Q. Did you compute at any time the population either one of the four districts? A. No.

Q. You did not give any consideration, did you,—A. You want to know how that was done?

Q. No. I asked you a question. Did you give population any consideration in making that division? A. None at all.

Q. I believe you said that you agreed on the Federal analogy. Am I correct in that? A. That is right.

Q. Will you tell me how the Federal analogy would apply to the system that you had worked out? A. With regard to the Senate?

Q. Yes. A. Well, the analogy we used was the fact that in the Senate of the United States there are
582 two Senators from each of the states without regard to poulation; also, in allocating two Senators at large from substantially half of the geographical area of the two lower counties we used the analogy of where you have Congressmen at large in some of the states when they apportion their representation in the Congress of the United States.

Q. Where in the Federal analogy do you find anywhere that Senators are elected from districts in counties? A. Well, the analogy comes from assuming that each one of the Senatorial districts is a state, insofar as the State of Delaware is concerned.

Q. Did you believe that each county had sovereignty? A. Did we believe each county had sovereignty?

Q. Yes. As a state has. A. This was discussed, and the pros and cons of whether or not the counties of Delaware had historic sovereignty, whether it had been eroded away, whether it has it today, this was discussed. We ar-

rived at no basic conclusion as to whether or not each of these three counties had sovereignty. No.

Q. Mr. Wilson, as a matter of fact, wasn't it the consensus of that committee that the counties in Delaware did have a sovereignty, an old, old sovereignty that
583 existed through to today? A. Had an historic sovereignty?

Q. Yes. A. Yes. I believe this, and I believe other members of the committee believed it, although we did not undertake to resolve it by formal action.

Q. But you believed that counties have sovereignty, didn't you? A. Had an historic sovereignty.

Q. Yes. At the time you were sitting as the chairman of this committee you belived they had sovereignty, did you not?. A. You mean today?

Q. Yes. A. I believe that their historic sovereignty has been substantially eroded away.

Q. I see. But was any of it left? A. As far I am concerned?

Q. Yes. A. Yes. I believe that Sussex County has retained some of its historic sovereignty.

Q. Right. And is that the reason why you felt that the Federal plan or system could be used and applied in Delaware? A. Heavens, no. That is not the only
584 reason; that is only one consideration.

Q. What are the other considerations? Are there any super-Senators that are elected in the United States? A. There are super-members of the House of Representatives elected in the House of Representatives of the United States, and we are dealing here with the question of principle.

Q. Then you are combining the Federal analogy as it applied to both the House and the Senate, and applying that to the Senate of this State. Is that correct? A. We found an analogy in the Federal Congress for this principle that we incorporated into our plan.

May I say this, that as far as this question of the super-Senators was concerned we were confronted with evolving

a plan that would meet with, we hoped, the approval of this Court and in this litigation, and this was a matter that concerned Sussex County and Kent County, and was of no concern to these plaintiffs so long as this Court would approve equal representation on a geographical basis insofar as the Senate was concerned.

Now, how Sussex County selects its seven Senators, if it is entitled to seven Senators, it seemed to us was no concern of yours or your clients; this is a Sussex County problem, and if a particular voter in Sussex County
585 did not like this method they could attack it, but we did not see how you could if we were entitled to seven members.

Q. I understand. Was the problem of the super-Senator posed and brought up at any time during your discussions? A. You mean by calling him a super-Senator?

Q. Yes. A. I don't know who first coined that phrase, whether it came out in the newspaper, or whether you did, or whether I did. It may be in this record. I do not know. It is so intertwined with the rest of my recollection, who can claim the credit of authoring that phrase, I don't know.

Q. Let us turn for a second to the House of Representatives. You say that you agreed at some point to put that on a population basis? A. Yes. That was one of the very first things or propositions that we discussed when we turned our attention to the House.

Q. What prompted you to put the House on a population basis? A. We felt this Court had a gun at the back of the General Assembly of Delaware, and we had better apportion the House of Representatives on a population basis under Baker versus Carr, and as fast as we could.

Q. You have read Baker versus Carr, have you
586 not? A. Yes.

Q. And you had been aware, I am sure, that the court had disapproved in Baker versus Carr discrepancies or variations that were four to one, didn't you? A. Just a moment. Do you have the first volume of this? I can

read to you exactly what my understanding of Baker versus Carr was at that particular time because I asked each member of the committee who was an attorney to express for the benefit of all the committee what his interpretation and meaning of Baker versus Carr was.

Q. Yes, but I am just asking you, Mr. Wilson, what your interpretation was and your understanding of what had been disapproved by the Supreme Court in Baker versus Carr.

MR. BOVE: It might be helpful if speaking of Baker versus Carr if we made it clear what decision Baker versus Carr the witness is being questioned about.

JUDGE BIGGS: I assume you mean the first opinion in Baker versus Carr, do you not?

MR. THEISEN: Yes.

THE WITNESS: That is what I am referring to.

MR. BOVE: If it is the first opinion in Baker versus Carr I object to the question as being based on a false premise.

JUDGE BIGGS: Let me speak to Mr. Theisen.

587 When you refer to Baker versus Carr I assume you mean Mr. Justice Brennan's opinion?

MR. THEISEN: Justice who?

JUDGE BIGGS: Justice Brennan's opinion.

MR. THEISEN: No, I think it was the opinion that the facts were set forth, Clark's concurring opinion set forth, I believe, your Honor, that the pattern, the topsyturvy pattern of the Tennessee Legislature that was being considered by the Court at that time.

JUDGE BIGGS: That is a concurring opinion that is not the opinion of the Court.

MR. BOVE: That is right. I enter my objection on the ground the question has a false premise, your Honor.

MR. THEISEN: This is not a false premise at all.

JUDGE BIGGS: Mr. Theisen, you are referring to Mr. Justice Clark's—

MR. THEISEN: Concurring opinion.

JUDGE BIGGS: —concurring as the opinion of the Court?

As I construe the opinion of the Supreme Court it was the majority opinion, not a special concurring opinion. The majority opinion is Mr. Justice Brennan's opinion.

MR. THEISEN: Yes. I am aware of that.

JUDGE BIGGS: The only error in your statement is
588 the majority opinion of the Court.

If I concur in an opinion of one of my brethren in a special opinion, it is not the opinion of the Court, it is a concurring opinion.

MR. THEISEN: Your Honor, I think we all refer to the Baker versus Carr decision as the hundred-page decision, as has the witness, and it is in the nature that he said he read the whole thing.

JUDGE BIGGS: I think perhaps this is again semantical differences. Can't you rephrase your question so it won't be subject—so it would be correct?

MR. THEISEN: Yes.

BY MR. THEISEN:

Q. What was your understanding, if anything, Mr. Wilson, with regard to the facts in the Baker versus Carr case that you reviewed with regard to the differences of representation that was considered by the Court as being in violation of the 14th Amendment? A. I did not understand Baker versus Carr to determine the merits of the litigation. I was of the opinion that it decided three things: That the Court possesses the jurisdiction of the subject matter, that a justiciable cause of action was stated on which the appellants were entitled to appropriate relief, and that the appellants had standing to challenge the Ten-
589 nessee apportionment statute.

I also paid particular attention to Justice Stewart and particularly to Justice Clark, because I felt Justice Clark laid down at least some indication of what the guide lines would be in a situation like that.

Q. Were you following Mr. Justice Clark's portion of the opinion when you and your committee approved of a

General Assembly—a House of the General Assembly that provided for deviations as much as 17 to 1 in districts in population?

MR. O'DONNELL: Objection.

JUDGE BIGGS: What is the objection?

MR. O'DONNELL: The basis of the objection is there is nothing in the record to show that such approval was made.

JUDGE BIGGS: I think the objection, frankly, is de minimus. I think we will take the answer. The witness is a member of the Bar and a very competent one.

A. To what are you referring? I understand that under our plan there will be a Representative from one district that has 1,600.

BY MR. THEISEN:

Q. 1,643. You were aware of that, were you? A. Oh, yes.

Q. And that, of course, was the 15th of New Castle
590 County, was it not? A. Yes. And then under our plan there would be a possibility that there would be a district with 22,500 period, with one Representative.

Q. With one Representative, and at the same time you were perpetuating, were you not, the 15th District and its representation of one Representative? A. That is right.

Q. Is that right? A. That is right.

Q. You did the same thing with the 14th District which had a population of approximately 2,300, as I understand it? A. I believe that is correct.

Q. When you did that did you study the population history of the 15th District of New Castle County? A. The past history of that particular district?

Q. The past population history of that district? A. No. We studied the population trends of Delaware over the past ten years.

Q. Did you study the growth pattern trends for the various districts in all of the counties? A. You mean each district separately?

Q. Yes. A. No, sir. I did not. Maybe some of
591 the other members. You are speaking of me personally?

Q. I am speaking of the committee through you. A. I don't believe that this past history of the growth trend of each of the representative districts separately was studied by the committee as a whole. It may have been studied by individual members.

Q. You did not know, for example, in the seventy years that had passed from the 1890 census to the census of 1960 that the growth pattern in the 15th District of New Castle County had been something less than 200 in population in seventy years? A. I did not know that.

Q. Prior to your appointment to this Bipartisan Committee by the Governor, Mr. Wilson, I certainly know that you practiced law a good number of years in Sussex County and are a very prominent member of the Bar and an outstanding citizen of this State, and I mean every bit of that; but I question, Mr. Wilson, what work had you done in the field or reapportionment prior to your appointment? A. This is the first work that I had done in the field of reapportionment, Mr. Theisen.

Q. What member of the Bipartisan Committee if any had done any prior work in the field of reapportionment? A. I seem to recall that Mr. Ernest S. Wilson, Sr. ad-
592 vised the committee that he had been studying this problem of reapportionment for a number of years; but whether he had actually done any work in the sense of writing treatises or a pamphlet or a book, or giving it special study, or working out a plan for application to a particular situation, and so forth, I don't know. But I seem to recall that he did indicate that he had given study to it, and also Mr. O'Donnell by virtue of his work upon this case had worked in the field of reapportionment.

Q. Well, this case, you are aware, I am sure, was only started on June 5th of this year, and you were appointed somewhere around July 5th. So there had only been a

month intervening, isn't that correct? A. You asked me what I knew about the other members working in the field or reapportionment. I am only telling you this is all I know.

Q. Let me ask you this: Did Mr. Ernest Wilson, Sr. or Frank O'Donnell offer to this committee any work that they had prepared in advance for the committee? Did they suggest any plan that was in any concrete form? A. I believe you will find throughout this transcript that they made numerous offers and suggestions and entered into the discussion rather fully and gave us the benefit of their knowledge, learning, and experience.

593 Q. But that was an oral experience in testimony, and so forth? A. Yes, this is what I am speaking of now.

Q. You met for the first time on July 12, 1962. You met again on July 16, July 21, and submitted your report on July 23. A. July 17 instead of the 16th.

Q. I am sorry. A. Yes, this is correct.

Q. The newspapers reported that this Bipartisan Committee had submitted a report out of haste and compromise. Would you so characterize the report of the Bipartisan Committee? A. No. There are numerous things that the newspapers say that I do not agree with.

Q. Your Bipartisan Committee report was to a whole committee, was it not? A. Yes.

Q. And you gave to the whole committee a whole report? A. We had this mimeographed and each member of the whole committee got copies of it and they asked questions and we gave an explanation. Several members of the Bipartisan Committee, shall I say my committee—

Q. Surely. A. (Continuing) spoke to the commit-

594 tee as a whole on the report and we undertook to answer all questions, and there was considerable discussion.

Q. Now, then, your whole report was not simply House Bill 574, was it? A. No, sir.

Q. What else did it contain? A. It contained three features. One was an immediate plan of reapportionment, which is the House Bill to which you just referred. Another was the calling of a Constitutional Convention, or at least putting the proposition on the ballot of the last election, which would be the first step. And the other was another amendment to the Constitution whereby if the electorate decided in favor of a Constitutional Convention, it could be held within a shorter period of time than September of 1965.

Q. Now, then, as you recall, who were the proponents of a Constitutional Convention being put on the ballot in November, and who were the proponents of speeding up the amendment? A. Let me put it this way: I will bow to no man as far as my own advocacy of both of these proposals may be concerned, so I am one of the proponents, and a very ardent one.

Q. Who were the others, do you recall? A. Mr.
595 O'Donnell, Mr. Cavanaugh, I believe Mr. Ernest S. Wilson, Sr.—let me put it this way: At the end of all the discussions we all became the proponents and all subscribed to the report. I know, at the end of our discussions, of no one who at that particular time was opposed to these other two steps as a part of the plan because the opportunity was afforded at the very outset that if we were not able to reach a unanimous report, there would be a minority report. But this was unanimous, and I think the very last minute of the last pamphlet that you have here before you shows that the report in its entirety was unanimously approved.

Q. Notwithstanding the unanimity of the committee, and so forth, in support of the entire report, it is a matter of fact and record, is it not, that the only matter that was passed by the legislature, by whom you hoped this report would be given some credence, was the amendment to the Constitution known as House Bill 574? A. That is right. The Senate did approve the calling of a Constitutional Convention, as I recall. The House never did—

Q. But it required the concurrence of the House— A. It did not concur by a three-quarters majority, or whatever the required majority is under that provision of the Constitution.

596 Q. So that it was defeated in the House, was it not? A. As I recall, it came up twice.

Q. And both times defeated? A. This is correct.

Q. Likewise the amendment to speed up the Constitutional Convention of course failed also, did it not? A. I don't recall exactly what happened to that. Let's put it this way: It never happened, even on one leg.

Q. Now, Mr. Wilson, there was one other feature of this report that I should like to ask you about. Do you remember that the Constitution of 1897 provides that in the event of the calling of a Constitutional Convention that you do so in accordance with Article 16, Section 2 and provides for 41 members to be selected from the 35 old representative district and two from each county at large? A. Yes.

Q. Do you recall that? A. Yes, sir.

Q. Now, then, did your committee consider that phase of the Constitution at all?

JUDGE BIGGS: Mr. Theisen, this is certainly a subject not covered by the examination in chief. How does this go into any issue that is presently relevant to this Court?

597 MR. THEISEN: This I believe, your Honor, is where you ruled—

JUDGE BIGGS: Yes.

MR. THEISEN: And it is where I objected—

JUDGE BIGGS: Yes.

MR. THEISEN: —stating that I intended to go into this.

JUDGE BIGGS: I didn't know you were going into this. The point that I made was, it seemed to me, since the Constitutional Convention had not been called, I didn't have in mind—in fact, I had forgotten this other provision of speeding up. But how is this speeding-up feature relevant to our present issue?

Mr. Theisen: No, sir, this is not the speeding-up feature, your Honor. Part of our complaint alleges that House Bill 574 is unconstitutional also because it embodies two separate matters.

Judge Biggs: This is a question of law, is it not?

Mr. Theisen: Yes, but I would like to know—

Judge Biggs: A pure question of law.

Mr. Theisen: This is the committee that recommended this.

Judge Biggs: Well, do you think this committee is more competent to pass upon legal questions and more
598 in the field than this Court?

Mr. Theisen: This is precisely what this witness has been put on the stand for by the defendants, to show the intent of House Bill 574, what was in back of it. I now want to know why a particular portion of House Bill 574 was placed in there and what was the intent in back of it.

Judge Biggs: It seems to me to be too far, but we have gone very wide indeed today. We will permit the question.

Mr. Theisen: Your Honor, this is part of our complaint.

Judge Biggs: I realize that, but this is cross-examination, not your case in chief. You have not called this witness as your own. This is a question of the scope of cross-examination. I will let you ask this question only on this subject. Really we must draw a line somewhere.

A. I think I know what your question refers to, but would you make it more specific and then we will each know what we are talking about?

By Mr. Theisen:

Q. Mr. Wilson, a portion of House Bill 574, and the last bit of it, the tail end of it, provides that notwithstanding the provisions of the bill about subdividing districts with 15,000 population or more, that for the
599 purposes of any Constitutional Convention that was called, the delegates—you remember this? A. I am with you now.

Q. —the delegates should remain as they were under the Constitution of 1897 and should not be affected by the provisions of House Bill 574. A. Yes.

Q. Now, I ask you, what was the discussion, if any? What was the intent of the committee in making that recommendation, if the committee made that recommendation? A. Why, some of the committee from the lower part of the State expressed some fear as to whether or not the reapportionment of the House under our plan would automatically result in a reapportionment of the delegates to a Constitutional Convention that we were proposing to call. They wanted to make it exceedingly clear that it would not. And so in order to arrive at what I felt and which the committee felt was one of these historic compromises for which this nation is rather famous we spelled it out, that it would not affect the delegates' strength to a Constitutional Convention that we were proposing to have called.

JUDGE BIGGS: I think this is as far as the Court desires this issue to be pursued, Mr. Theisen.

MR. THEISEN: May I have a moment to confer, please?

600 JUDGE BIGGS: Yes.

(Mr. Theisen conferred with his associate counsel:)

MR. THEISEN: No further questions.

MR. O'DONNELL: No questions.

JUDGE BIGGS: I wanted to make a statement. I want to make it perfectly clear that this Court does not regard itself as having a gun in the back of the General Assembly. We have our duty and the General Assembly has its to perform, and in our respective fields this Court assumes it will do its duty, and the General Assembly will do its.

Thank you. Mr. Wilson.

We will start again at 10 o'clock tomorrow.

I may make one statement that has nothing to do with the merits of the case.

I assume and I hope this case will go to the Supreme Court of the United States. Your record here is getting very large indeed, and will be quite expensive. That is all.

We stand adjourned until 10 o'clock tomorrow morining.

(At this point the trial was adjourned to Friday, January 25, 1963, at 10 o'clock a. m.)

4. Court Exhibit 4: Court's Reapportionment Plan

[Caption Omitted]

POSSIBLE REAPPORTIONMENT

Using the map of the voting districts of the three counties (an exhibit to the original bill of complaint), inserting populations and combining adjacent districts, the following result can be achieved:

For instance, by combining the 1st and 4th Districts of Wilmington, the 11th and 12th of New Castle County, and the 13th, 14th, and 15th of New Castle County, you get rather interesting results:

Districts	*Pop.*	*Representatives*
1 plus 4	13208	1
2	33772	1 plus 3
3	18539	1 plus 1
5	30488	1 plus 2
6	58228	1 plus 6
7	47509	1 plus 5
8	23428	1 plus 1
9	20040	1 plus 1
10	40293	1 plus 4
11 plus 12	12726	1
13 plus 14 plus 15*	9395	1

* The 15th District of New Castle County will soon have an additional 1200 voters (estimated) because of the coming of Shell Oil Co.

By combining Kent County as follows, we get the following results:

Districts	*Pop.*	*Representatives*
1 plus 3	13161	1
2	17806	2
4 plus 6 plus 9	12900	1
5 plus 7	17005	1
8 plus 10	10097	1
		6

By combining Sussex districts, we get the following results:

Districts	*Pop.*	*Representatives*
1	9641	1
10	12359	1
7 plus 8	9580	1
9 plus 6	12281	1
2 plus 3	15876	1
4 plus 5	13458	1
		6

These districts which have been combined are contiguous. Using a basis of a minimum population of 10,000 per district* plus one additional representative for each additional 7500 of population would indicate 34 representatives for New Castle, 6 for Kent and 6 for Sussex.

* The 13th, 14th and 15th of New Castle and the 1st, and 7th and 8th (continued) of Sussex would arbitrarily be allowed one representative.

5. Def. Ex. 1: Minutes of the Bipartisan Committee on Reapportionment and Constitutional Convention

STATE OF DELAWARE
BI-PARTISAN COMMITTEE ON REAPPORTIONMENT AND CONSTITUTIONAL CONVENTION

Sub-Committee meeting held in the Administrative Building, Delaware Memorial Bridge, New Castle County, Delaware, Thursday Evening, July 12, 1962

PRESENT:

HOUSTON WILSON, (Chairman), Georgetown,
HAROLD SCHMITTINGER, (Secretary), Dover,
MAURICE A. HARTNETT, III, Dover,
THOMAS L. JOHNSON, Rehoboth,
GERARD P. KAVANAUGH, Wilmington,
FRANK O'DONNELL, Wilmington,
MICHAEL A. POPPITI, Wilmington,
ERNEST S. WILSON, SR., Wilmington.

(Transcription of a tape recording of the proceedings supplied by the Sub-committee.)

TRANSCRIBER'S NOTE

Inasmuch as I did not have the benefit of hearing any of this meeting, I have no memory guides to assist me with the task of deciding which speaker made which remarks. Thus I have left blank the spaces where the name of the speaker should appear, unless I was fairly certain of identification. The majority of the time it was impossible to determine exactly who was speaking, other than in the case of the Chairman and the Secretary, both of whom I have reported personally often enough to recognize, and Mr. Harnett.

Where blank spaces appear in or at the end of sentences, this is due to the fact that despite concentrated effort for many, many minutes I was unable to decipher the sound, nor imagine the correct word or phrase to insert. These blanks

were caused by passing trucks, laughter, coughing, banging tobacco pipes on ash trays or metal baskets, overlapping voices, indistinct pronunciations, or words so rapidly spoken they are impossible to separate into intelligible words against the background noises.

I felt it wiser to leave blank the speaker's designation, rather than risk attributing the wrong observations to a particular member of the sub-committee.

There has been no charge made for pain and suffering!

* * * * * * * * * * *

2 MR. : Shirley (Seward) in the Levy Court uses that stenotype, and maybe we can persuade the Levy Court to help us out.

MR. POPPITI: O. K.

MR. : I have heard of her using the stenotype in meetings I have attended recently.

MR. POPPITI: Well, I'll see.

MR. : It has some merit, because I had occasion to appear before the Levy Court two weeks ago, and we were trying to refresh our recollection about some understanding, and she pulled out her notes and cleared it right up.

MR. : Sure. That's why I think we really ought to have somebody take that type of notes.

MR. : Yes, because people can get into a discussion and perfectly honestly you will hear what you want to hear, and someone else will hear what he wants to hear, and neither one will hear the same thing.

THE CHAIRMAN (Houston Wilson): I would suggest, then, that Mr. Schmittinger, our secretary, make arrangements with such Democratic assistance as he may need, with the levy court of Sussex County, Kent County, or New Castle County, whichever one you think it should be, to arrange for the stenographic taking of the minutes and the transcribing of them.

MR. : Suppose you and I approach the levy court on that basis. Maybe they might help us.

MR. POPPITI: All right. What is her name?

MR. : Shirley Seward.

THE CHAIRMAN: I would suggest that possibly the first thing we ought to do is to have me assign each of you about two minutes to make a brief statement of the purposes and functions of this meeting, so that we can perhaps come to some understanding as to why we are here and what we hope to accomplish, so we can have a clear understanding of what our own sense of duty and responsibilities may be.

So I will start here on my left. Mr. Poppiti, would you like to start out by telling us why you feel we are here and what our responsibilities are?

MR. POPPITI: Well, to begin with, I happen to have participated in the bipartisan meeting which Governor Carvel called, and the reason for calling the bipartisan meeting was to explore ways and means to meet the court threat of reapportionment head on. It was the consensus, and you have probably read newspaper accounts, but the consensus of opinion at that meeting was that this problem of reapportionment should be met by the people, themselves, in their Legislature rather than have the courts tell us how to reapportion ourselves.

As a result of that meeting, which agreed in principle with what I have just stated, this subcommittee was suggested, consisting of four political representatives from each party from each of the four political subdivisions.

Now, political subdivisions in the sense that where political parties are organized. And, of course, we are here having been instructed in a sense by the bipartisan committee to explore ways and means (1) either to meet this problem by recommending that a constitutional convention be held, or (2) by coming up with a plan of reapportionment, which we could then bring back to the committee of

the whole, and hope that the committee of the whole could then persuade the members of the Legislature to go along with that bipartisan program.

Personally, I feel that we ought to address ourselves to what might seem to be the easiest decision to make, to see if we can't agree that we should at least get the question of whether or not there ought to be a constitutional convention on the ballot. Having met that easier problem, at least in my opinion, we would then address ourselves to trying to formulate a plan of reapportionment which would be palatable to all the segments of the State represented here.

THE CHAIRMAN: Thank you, Mr. Poppiti.

Mr. O'Donnell?

MR. O'DONNELL: I would like to endorse what Mr. Poppiti has said, and I would like to speak for a second in a slightly different capacity.

I am representing several parties in a suit that is pending in the Federal District Court here for the District of Delaware.

The Court recently met with the attorneys of record, and it is my judgment that the Court will promptly take some steps to implement the Supreme Court's recent decision, if we do not do something.

I can't say that the Court won't take some concrete steps, even if we endeavor to do something, ourselves, with our own Legislature. However, it is our opinion that if we don't do something, ourselves, the Court will. Hence, I feel that we should as promptly as possible take some affirmative steps to show the Court that we intend to correct the inequities which exist.

The question of apportionment has been submitted to the political committee of which I am chairman, and we have unanimously endorsed reapportionment.

So I would like to say now that I am in favor of doing something, as far as I am concerned, and I hope this committee will do something. And I have rather an open

6 mind about what we should do. There are not very many alternatives available to us, but I will suggest that we adopt one of the Legislative alternatives.

I hope I haven't misstated the Court's position. But that is the way I have interpreted it, that they are going to be very firm in the matter. And they have set the first argument for less than two weeks from today.

MR. HARTNETT: Define, please, what the argument will be about.

MR. O'DONNELL: The first argument will be on my motion, or the motion of several other defendants, for a stay of proceedings, to give the Legislature—I am trying to quote the language which several of us used—a fair opportunity to reapportion.

The second argument will be held a little more than two weeks from today. Other motions are under consideration in that argument.

I think that if we could show the Court that we were about to take a concrete step, or that we have done so, it certainly might be persuasive and help any decision that might be rendered.

MR. : Frank, have you gotten any impression from your suit that the Court would be satisfied with
7 only the constitutional convention approach?

MR. O'DONNELL: I can't say what the Court's position will be, except that I feel they will be firm and expect something to be accomplished.

THE CHAIRMAN: All right, Senator.

MR. JOHNSON: Well, as I understand the purpose of this committee, we are meeting to recommend a plan of reapportionment to the Governor. This is more or less of a subcommittee to make this recommendation, and also to recommend whether or not we approve of the constitutional convention.

Insofar as reapportionment is concerned, it has been a matter that has been discussed for many, many years. For the several years I have been in the Legislature, it has

been discussed and just never got anywhere, but now it seems to be a matter of having to do something, more or less being forced into it by the Supreme Court's decision. And I may add that I have been in favor of reapportionment for a long time, since I voted for it and co-sponsored a bill, especially in connection with the House of Representatives.

I am not in favor of relinquishing any of the senators we have in the lower counties. I am in favor of having an equal representation from each of these counties. But so far as the House is concerned, I am perfectly willing to go along with some plan, either the plans that have been suggested in the bills, or some plan that may come from this meeting.

THE CHAIRMAN: Thank you, Senator Johnson.

Mr. Hartnett.

MR. HARTNETT: Oh, I thought I was going to be last.

I think it has been stated pretty much already what we are supposed to do. I don't think there is anyone in this room who doesn't realize there must be reapportionment. The question is what is the best way to do it.

I think the big question is to devise some plan that will be practical in the sense that it can be enacted, and will be enacted by the General Assembly. I think that is our biggest problem.

THE CHAIRMAN: Mr. Kavanaugh.

MR. KAVANAUGH: Well, not having participated in the meetings of the parent group, and from which meeting it is my understanding that the concept of the subcommittee was formulated, my own impressions are hearsay, second-hand to say the least, garnered in part from the newspaper publicity which has been given to this, and in part from the Republican counterparts that were at that meeting. And I would say that in my own mind at the moment from those two sources principally, the responsibility of this subcommittee is to attempt to reach agreement on two separate pieces of legislation: (1) A bill setting forth a plan for reapportionment of representation

in the General Assembly of the State of Delaware; and (2) a bill providing for a constitutional convention; and that the recommendation of this committee would be forwarded to the parent body, which is the group that met in the Governor's Office from Delaware, and that it would carry with it our recommendations and any specific legislation in those two fields which this subcommittee could agree upon; that the privilege of a minority report was preserved, and the other rules of committee functioning.

That, Mr. Chairman, concludes my summation of my understanding of what the purpose, function, and scope of this committee is.

THE CHAIRMAN: Let me ask you something, those who were there, in connection with what you said, that is, to forward our report back to the parent committee. I was not a member, also, and I am somewhat in the dark as to exactly what our function is.

Is this your understanding, that it goes back to the Parent Committee? And then do I understand from that the Parent Committee is going to consult with our Governor in order to resolve the question of whether or not it will be a feasible matter to recall the Legislature to consider and take action upon any proposal which we make to the Parent Committee, and which they feel should be submitted to it for its disposition——

MR. POPPITI: Because it was the feeling that if we agreed on something, it would reflect a truly bipartisan approach, and presumably from that kind of report being submitted and then coming out of the Parent Committee, the Legislature might be persuaded to go along with it, because it would have been persuaded by those of us from every segment of the State.

THE CHAIRMAN: I see.

MR. O'DONNELL: That Committee had hoped that our report would be made to them by the third week in July.

MR. JOHNSON: July 23rd was the date I understood it to be.

MR. POPPITI: Well, according to the newspaper, I said the week of July 23rd.

THE CHAIRMAN: Yes, well, we can get into that later. I would like to see if we can't take this next step first.

Mr. Wilson, we would like to hear from you on what you think this committee should do.

MR. E. S. WILSON: I, too, was not there, but I concur in Jerry's interpretation of what we have gathered from Bill Roth's attendance at the meeting, and also from the
11 newspaper reports.

I would just like to add one thing, and that is, there might be two programs of reapportionment that we might want to consider, and one is if the Court does decide that Section 2 is unconstitutional, I think this committee should have a scheme, or plan, that would be effective right away. And to me that is our greatest hazard and job.

Secondly, there might well be a reapportionment plan that would be, shall we say, less of an emergency, a little longer range thing.

Then, of course, the third one would be the constitutional convention.

That is all I have.

MR. SCHMITTINGER: I would simply add that it is our understanding that we are not dealing with alternatives; in the sense that we are either going to recommend a constitutional convention or an amendment.

I also understand that we can perhaps suggest that we pursue both methods at once. Is that correct?

MR. HARTNETT: I think it was left open. We could pursue either, or none, or both.

MR. SCHMITTINGER: And the only other thing I want to say is, I think that we should for many reasons in
12 discussing the reapportionment aspect consider and adopt what has been referred to as the federal principle, that the three counties would have equal representation in the senate as the states have in the United States Congress.

THE CHAIRMAN: Gentlemen, let me see if I can perhaps summarize this discussion. Perhaps we can come to some agreement or understanding.

It has been brought out that we are to consider either a definitive plan of reapportionment for our State General Assembly; or we are to consider recommending that a constitutional convention be called; or we are to consider both of those aspects.

We are to make our report to the Parent Committee, and that report may be either a unanimous report, or a majority with a minority report attached.

The Parent Committee is then to consider our report and make its recommendations to the Governor with respect to the practicality of calling a special session of the General Assembly to take action upon our proposal as considered and possibly revised by the Parent Committee, with some hope and expectation that definitive action would be taken by the Legislature thereon.

I understand that we must always keep in mind
13 that Delaware is confronted with litigation with regard to whether or not, as I understand the constitutional issue, Delaware presently has a rational plan of reapportionment, or whether on the other hand they have a plan which can only be defined as

Is this a fair and honest statement of what the issues are that have been defined so far?

I think that I would like to add just one more thought to this, and that is this, which came out in one of your suggestions: That this committee must deal with the practical aspects of the problem which confronts it. And the practical aspect, as I view it, is to submit proposals which we feel have some hope of definitive action on the part of the Senate.

It would be an idle and futile thing for this committee, regardless of our own personal feelings about it under the present state of the litigation, to submit to the Parent Committee and to have it in turn recommend to the Legis-

lature a plan which we cannot conscientiously feel in our own mind has some practical hope of passage.

It seems to me that if we should submit a plan, or plans, in the alternative or together which we feel has from a practical point of view no hope of passage, then we would be doing our own State a great disservice in the eyes
14 of the Nation and in the eyes of the courts. For then it would be said that here was a committee that dealt with this problem, and came up with a plan which it was willing to recommend, and then the State, acting through its General Assembly, saw fit to ignore or not act upon it, and therefore this is some evidence at least that the State of Delaware, through its duly constituted representatives, are not acting in good faith in this matter.

I don't think that we would want to do that disservice to the position of the State before the Court. We would not want to do that disservice to our State in the eyes of the world.

I think this is to me something that perhaps is a matter of State pride, and the ability of your State and my State to deal with its internal problems.

Is there anything else that any of the rest of you would like to add to what I have undertaken to state as a summary of why we are here?

MR. KAVANAUGH: Well, for the record, Wilson, I would like to at least make this remark, that your restatement summation of the remarks of the members of the committee are entirely in accord with my understanding of what the scope and function of this committee is. And secondly, the criteria and standards which you laid down gently in your capacity as Chairman are admonitions that I think we will all subscribe to.

15 MR. SCHMITTINGER: I appreciate your reference to the record, Mr. Kavanaugh. (Laughter.)

MR. POPPITI: That reflects his training. You have six lawyers at this table.

THE CHAIRMAN: I think possibly the second step, with your permission, that we ought to approach at this time,

is to ask the lawyers on the committee, if I may, what is their concept insofar as they had an opportunity to study the opinions of the Supreme Court and the several state courts that have already acted on this matter? In other words, what is the present status of the litigation throughout the Nation as nearly as we have been able to discover with respect to the width of discretion that any state may have in dealing with this patricular problem? What are the guidelines, as they conceive? Do they conceive the State is limited to a single approach? Or do we conceive that a state in the solution of its own internal problem with respect to apportionment has a certain amount of discretion? If so, how wide may that discretion vary?

Am I making myself clear as to what I am trying to lay before the committee?

What I am trying to say is this, that dealing with legal aspects and constitutional aspects, is the channel a narrow one, or is the channel a broad one? And where are
16 the limits of our discretion in the terms of the discretion of this State in the approach to the problem?

MR. O'DONNELL: Now, the matter is, or has been, under consideration in several states. I have read decisions from Pennsylvania, Wisconsin, and New York. My reading of those decisions does not furnish the answer to your question.

In Pennsylvania the matter was for all practical purposes thrown out of the state court.

In Wisconsin the three-man Federal Court ordered the legislature to take action by certain times.

MR. : Five days.

MR. O'DONNELL: Yes, within five days.

The legislature did adopt a plan which was vetoed by the governor.

MR. : Was that five days of the original decree, or——

MR. O'DONNELL: Oh, no. Five days after the entry of the order by the Wisconsin Court.

MR. POPPITI: If I may interrupt, Frank, it is a terrible chore for you to recall from memory, for anybody, this. Mr. Ernest Wilson has here photographic copies of certain pages of the publication known as Law Week, which is put out on a weekly basis by the Bureau of National
17 Affairs in Washington. He has photographic copies of six different issues, and each issue carries what purports to be the latest ruling of some Court in the jurisdictions of Tennessee, Georgia, Idaho, Alabama, Maryland, and Michigan, with the most recent being that of the Maryland Court on July 3.

Now, just for the record, we could ask the Secretary to read pertinent parts of these by way of summation, or summary of what these Courts have held, if this is the Chairman's wish.

THE CHAIRMAN: My feeling on the thing now, if I may interpose here, is that I would like to have the committee share the benefit of the preliminary statement from each one of you attorneys with respect to their concept. I am sure that most of you have seen this or have read it.

I know that as far as I am concerned, I have read and tried to digest some thousands of pages—I think it would amount to about a thousand pages. I can list the cases in Law Week that I have, and I have copies of what you are talking about here, but I think in fairness to all the other members of the committee, that perhaps since we have six lawyers here, we can at least get some guideline as to their thinking on the thing, before we start deliberating upon what is to me, acting for the committee, I mean speaking on behalf of this committee, which in turn is supposed to be some sort of guide to the State acting through
18 the Legislature as to what are the limits of the State's discretion in acting upon this.

With your permission I am going to ask Mr. O'Donnell to continue his own analysis.

MR. O'DONNELL: Well, briefly, from the cases I have read, I haven't found any limitations placed upon the

method which the State may follow. I believe that if Delaware should follow either of the constitutional routes available to it, the Court might find either of them to be satisfactory, even though both of them will take a considerable amount of time. However, that is merely by approval.

MR. POPPITI: Frank, is Houston asking——

THE CHAIRMAN: No, no, no, I am not asking that. I am asking this: Let us assume now that reapportionment is now a judicial Constitutional question, and that there are certain limits within which a State must keep its apportionment of the General Assembly in order to stay within the equal protection clause of our Constitution.

What I want to find out is, can we arrive at some concept in our own thinking as to how wide discretion the State has as between a rational plan on the one hand, and an invidious discrimination on the other?

This is the $64,000 question we are all hoping the
19 Supreme Court will answer sometime, but at least we ought to have at this stage some concept of what is the width of the channel, or how narrow that channel is.

MR. SCHMITTINGER: Well, Houston, I think you have answered the question. I think this great Supreme Court case which is the catalyst that has brought this about, Baker vs. Carr, you and the other attorneys know came up on a motion to dismiss. And all the Court there decided was simply that the question of reapportionment was not only a political question that the courts were prohibited from looking into. The merits of the case were not considered, and we have no guidelines as to what the Court would accept or would not accept.

MR. POPPITI: I would personally feel that since the United States Supreme Court has stepped in, that we are to come up with a plan of apportionment that, well, in the final analysis the federal plan, that is to say, we would apportion our House on a population voting basis, and apportion the Senate, say, on a geographic district basis; that I would think if we came up with a plan less feasible,

for example, equal apportionment of the Senate by counties, and some population proportionment of the House. And I would think that the Court would sustain that kind of apportionment as being Constitutional.

And, personally, that is the kind of plan that ap-
20 peals to me. Because, let's face it, we have got to recognize that, as you said in your summation, we have got to take a very practical approach to this problem. We have got to come up with something that in the final analysis will do the job, but it must be palatable to those people in the State who are going to give up something, as well as to those in the State who are going to receive something. And I think much must be said for preserving the equality of the Senate among the three counties, and having the other House perhaps a larger Assembly represent the population.

Because I feel in this fashion that some of the smaller districts which would not qualify for representation in the House would nevertheless have representation in the Senate. And, after all, in my opinion, most of our government in the Legislature is a matter of compromise, and in this way each side can preserve their rights and positions.

MR. HARTNETT: I agree with Mike.

One case I might mention is the case decided by the Idaho Court. Unfortunately it was not decided by the Federal Court in Idaho, but was decided since Baker vs. Carr. And the Idaho Supreme Court upheld apportionment of the Idaho Legislature, which provided that a representative district could have one member, even though the representative district did not have sufficient popu-
21 lation to qualify under a quotient of dividing the total members into the total population.

I say, I think this is a significant opinion, although unfortunately only by a state Court.

The only other thing particularly noteworthy was the original Maryland case. And that is noteworthy because Maryland's constitution is like Delaware's, in the sense

that it has no provision for reapportionment by the general assembly, and legislative districts were set forth in the Maryland constitution.

That was a Maryland State Court, the Court of Appeals for Maryland. They, of course, ruled that the Maryland method of apportionment, as set forth in the Maryland constitution, was unconstitutional, and directed the legislature to do something about it, and to do something about it by statute rather than by any constitutional agreement.

I haven't found any case that sets forth really, one, two, three, four, five, what the standards are.

MR. POPPITI: Houston, I would think those are our guidelines, but I think there is also implicit in our discussion another problem that I thought you were alluding to, and that is, how much action would be required by the Legislature as a result of our deliberations here——

THE CHAIRMAN: I was going to reach that.

22 MR. POPPITI: That is the $64,000 question——

THE CHAIRMAN: There are two $64,000 questions. One is, how close is the gun to our back? And the other is, if the gun is right up against our back, what discretion do we have in answering the real question?

As I read Baker vs. Carr, insofar as it lays down any guidelines to any state in dealing with this problem—and understand it is repeated again and again in Baker vs. Carr, that this was all the Supreme Court decided, and this is a very brief concurring opinion of Mr. Justice Stewart. That is this: The Court today decides three things and no more: (a) that the Court possessed jurisdiction of the subject matter; (b) that the justiciable cause of action is stated upon which appellants would be entitled to appropriate relief; and (c) . . . that the appellants have standing to challenge the Tennessee apportionment statutes.

Now, that's all the Court decided in Baker vs. Carr. But in reading through the hundred pages of that opinion, I do feel that some of the justices let drop some guidelines as to the question of discretion on the part of the state, and

perhaps Clark made it more clear than any of the others just what his concept of the discretion is, and that is this:

The truth is, although this case has been here for two years and has had over six hours of argument, and
23 has been most carefully considered over and over again by us in conference and individually, no one, not even the State or the dissenters, has come up with any rational basis for Tennessee's apportionment statute.

No one contends that mathematical equality among the voters is required by the equal protection clause. But certainly there must be some rational design to a state's districting.

The discrimination here does not fit any pattern—that is in Tennessee. As I have said, it is but a crazy quilt.

My brother Harlan contends that other proposed apportionment plans contain disparities. Instead of chasing these rabbits, we should first pause long enough to meet the appellant's proof of discrimination by showing that in fact the present plan follows a rational policy.

Then we get over to the very brief opinion of Mr. Justice Stewart, and he makes it more clear.

The complaint in this case asserts the Tennessee system of apportionment is utterly arbitrary, without any possible justification in rationality.

The District Court did not reach the merits of that claim. This Court quite properly expresses no view on the subject. Contrary to the suggestions of my brother Harlan, the Court—meaning the Supreme Court—does not say or
24 imply that state legislatures must be structured as to reflect with approximate equality the voice of every voter. The Court does not say or imply that there is anything in the Federal Constitution to prevent a state acting not irrationally from choosing any electoral legislative structure it thinks best suited to the interest, temper, and customs of its people, and contrary to the suggestion of my brother Douglas the Court most assuredly does not decide the question, may the state weigh the vote of one

county or one district more heavily than it weighs the votes in another?

In McDonald vs. Greene, the Court held the equal protection clause does not deny the state power to secure a proper diffusion of political initiative as between thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former.

In case after case arising under the equal protection clause the Court has said, again only last term, that the Fourteenth Amendment permits the state a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. In case after case arising under that clause, we have also said the burden of establishing the unconstitutionality of the statute rests upon him who assails it.

Now, is this some indication of the width of dis-
25 cretion that Delaware has, or is it not, like Clark and Stewart say? Or are we limited, as perhaps the thought has gone out, to at least apportioning one house of our Legislature with a high degree of mathematical certainty? Or does the State of Delaware have the discretion, in its wisdom, as was said, or choosing any rational elective legislative structure it thinks the best suited to the interests, temper and customs of its people? Or, as Clark has said, no one contends that mathematical equality among voters is required, but there must be some rational pattern, and where the discrimination does not fit any pattern, but is a crazy quilt.

This to me is something that deeply concerns the State of Delaware or any sovereign state. This is something that I don't think the Supreme Court has answered with any degree of certainty, but it has in these concurring opinions laid down some guidelines, that you have a feeling there have been some practical applications of Baker vs. Carr to some given state situations on either the supreme

court level in some of the states, or on the district court level.

Am I right, Mr. O'Donnell?

MR. O'DONNELL: Practical in the sense that——

THE CHAIRMAN: They have a particular plan.

MR. O'DONNELL: That they have been compelled
26 to move forward with a plan, such as in Michigan.

THE CHAIRMAN: And they have banned certain plans they have had.

MR. HARTNETT: But all of the cases I have read since Baker vs. Carr have always said it is true the Supreme Court didn't say it, but the courts since then, the district courts and the appellant courts of the states, there must be some recognition given to more populous areas.

I don't think anyone would say it has to be 100%. You are never going to have districts that are absolutely equal. But you have got to give some recognition that a larger populated district is entitled to more representation than a smaller populated area.

THE CHAIRMAN: I certainly agree with you that any plan that can be approved as being a rational plan must have a rather large ingredient somewhere in that plan with respect to the ratio of population in one district to another.

MR. : In the lower house.

THE CHAIRMAN: Yes. But I don't think it requires absolute—now, whether it requires it in both houses, or just one house is still an unanswered query.

MR. POPPITI: I would think that because we have two houses, that this does give us an opportunity to come
27 up with a rational plan which will meet the requirement that the populous areas be given recognition at the same time you preserve the rights, as one of the justices said, of thinly populated areas. I think fortunately by having a bicameral legislature you can work out a plan which will meet the requirements of both groups.

MR. KAVANAUGH: Well, look, may I just talk off the tongue, my own, a little bit?

THE CHAIRMAN: Yes.

MR. KAVANAUGH: In a broad panorama of this whole thing, I think basically you have got to start out with certain fundamental principles, and one is that we have a republican small iron form of government. Now, this to me means a representative type of government in which the people have chosen to have themselves governed with their consent by their chosen representatives. Now, to the extent that they surrender their right or power to govern themselves to an elective legislature, then I think, as the Court points out in its wisdom in consideration of this thing, that it has laid a bracked within which it hopes that the states will take care of their individual problems of representation on the state level.

To paraphrase what Baker vs. Carr says, a rational plan of reapportionment. And to that I would add a reasonable standard, a standard or criterion, if you will, would be some expression in your Constitution, which again is the voice of the people, as to how they wish the legislature to represent them during the ensuing years that a legislative body is in being pursuant to a constitution, which is the governing organ of the people of the state.

Now, the next point I would make is this, that the Constitution of the State of Delaware, of all the state constitutions which I have had an oppotrunity to look at, is the most rigid on this question of the composition of bot houses which comprise our General Assembly—the most rigid.

And in many of the cases we are dealing with here, it has been the failure of the legislature to do something which their own state constitution permits. They have failed to take action.

Under our State Constitution there is no room for the Legislature to take action.

Now, again we have an entirely different situation from that confronting the Court in Baker vs. Carr. And my caution is that we regard our particular charge or commission as a subcommittee and confine ourselves within the

ambit of our own problem here; within the brackets, as Mr. Wilson has read from Baker vs. Carr.

And with that I would conclude my remarks.

29 THE CHAIRMAN: In other words, what you are saying is that your feeling that the nearer the State gets to mathematical apportionment, the more rational plan; the farther away it gets from mathematical apportionment, the greater the chance that it will be construed to be irrational?

MR. KAVANAUGH: Yes.

THE CHAIRMAN: Now let me go on and say this, as I conceive it, the farther away you get from mathematical apportionment in either one or both of your houses, the more irrational the plan becomes, unless, as I see it, the State does it in its wisdom by reasons of a plan which the State feels, and which the Court can swallow, is better suited to the interests, temper, and customs of the people.

In other words, if you get away from mathematical apportionment, you must substitute a good, sound reason for doing this. And at least McDonald vs. Greene recognizes that.

You can get away from it to some degree. What the degree is when you consider the diffusion of political initiative as between thinly populated counties and massive-populated counties.

MR. HARTNETT: I would like to remark to Mr. Kavanaugh that the Maryland Constitution is very similar to Delaware's and has no provision in the Maryland Constitution for apportionment, and the District Court said it was unconstitutional.

30

THE CHAIRMAN: The New York case was remanded. That case was reported in Volume 30, No. 48 of the Law Week, Page

There it was found that upon a fixed geographical center, and upon a fixed geographical house of representatives, based upon the Constitution of 1894 of New York; and that seems to be a case that was sent back by the Supreme

Court on June 11, 1962, to the three-judge Court of New York.

MR. HARTNETT: Was there a decision in that case?

THE CHAIRMAN: No, it has just been sent back under Baker vs. Carr. The three-judge Court dismissed, and each judge wrote an opinion, and each judge came to the conclusion that the case should be dismissed, but upon different grounds. They didn't agree upon the grounds of dismissal.

MR. HARTNETT: That was decided before Baker vs. Carr.

THE CHAIRMAN: And it came up before the Supreme Court, and the Supreme Court sent it back, and again Justice Harlan dissented.

MR. POPPITI: Could we clarify this a little bit by agreeing that the Senate should be on a geographical basis, and the House would be on a——

THE CHAIRMAN: The Supreme Court hasn't said this yet.

31 MR. HARTNETT: No, he means we, here.

THE CHAIRMAN: Oh, we, here.

MR. KAVANAUGH: First of all in establishing some guidelines for ourselves, I think we ought to decide on whether or not we are going to talk about a bicameral or a unicameral type of general assembly.

Our historical concepts and our traditions teach us that it should be bicameral. We have the House and the Senate. This, then, to me, to my thinking, injects still another standard which may be applicable in addition to your pure mathematical type of thing where you get into representation of one representative for a certain number of people. And as long as your standard is reasonable, whether it be area, whether it be geography, or whether it be the complexion of particular metropolitan area—for instance, the Convention Debates of the 1896 Convention teach that one of the motivating factors for assigning Senators to the City of Wilmington was the type of population they have as urban as opposed to rural, it was tran-

sitory, it was largely people who were employed in the heavy industries that existed at that time in Wilmington, as again compared with the purely rural or agricultural communities as the rest of New Castle, Sussex, and Kent knew. And these were the basic concepts which influenced Delegates to the Convention to accept this principle
32 of two for Wilmington, five for the rest of the counties, including Sussex and Kent in the Senate, and whether it was part of their thinking that as coincidence, or as a deliberate part of their thinking about this thing, it also turned out that the population of Kent, Sussex, and rural New Castle County was within 3,000 people one to the other.

Once you ignored the City of Wilmington under the population of 1890 which was estimated roughly at 75,000—when you took that out of the New Castle population, the 1890 population of the rest of New Castle was in the neighborhood of 35,000. Sussex, I believe, was 38,000, which was 3,000 more, and Kent was 32,000, which was 3,000 less.

Now, these are the figures that were in the Convention Debates.

MR. : I can verify that Mr. Kavanaugh is doing his homework well.

MR. KAVANAUGH: This to me was very interesting from an historical standpoint. And this to me is what I would regard as a reasonable standard within the framework of our rational plan of reapportionment, when we are considering a bicameral General Assembly.

MR. HARTNETT: Well, are you in accord with the statement that someone made that we feel most of us
33 agree that the Senate should be on an equal basis, and the House should be on at least some type of recognition of population?

MR. KAVANAUGH: Where there is some rational relationship to population.

MR. HARTNETT: Yes. Are you agreeing with that, or are you disagreeing with it?

MR. KAVANAUGH: My own principle with respect to the standard to apply would be one of basing it on population for the Lower House, and equal representation on a geographical—geographical, an area, a district basis as far as the Senate is concerned.

MR. : Well, I think we are all agreed on that.

THE CHAIRMAN: Well, perhaps we can take one rather substantial step forward and lay that by. Would someone like to propose——

MR. : Mr. Chairman, I was trying to sketch one out here. I think I have it moved along far enough that I can improvise the balance.

I would like to move that this committee endorse the principle that the General Assembly of the State of Delaware be composed of two houses.

THE CHAIRMAN: Bicameral.

34 MR. : Is that as far as you want?

MR. : I would like to stop right there.

MR. : All right, I will second that motion. So we can get that out of the way.

THE CHAIRMAN: Any further discussion? Or are you ready for the question?

All those in favor? Perhaps we'd better have a show of hands on this.

It is unanimously approved.

MR. : Mr. Chairman, I would like to further move that the Upper House, or Senate, of the General Assembly be based upon, or apportioned on, a reasonable geographical basis.

THE CHAIRMAN: Do I hear a second?

MR. HARTNETT: Second.

THE CHAIRMAN: Any discussion?

MR. : Yes, I would like to have a discussion on the definition of the word, "reasonable."

MR. HARTNETT: I think we ought to accept this now and I can see where we are coming to.

MR. : Well, I don't understand the word——

MR. HARTNETT: What should be the geographical breakdown. But I think that's——

MR. : No, no, I don't think we have to
36 define a geographical area by metes and bounds. All I am asking is what your understanding is generally in your use of the word, geographic?

MR. : Land area.

MR. : We are agreed that——

MR. : Without regard——

MR. : Use 'portionment on a geographical basis as being based solely upon a given geographical area, land area. In other words, by subdividing the land area and giving each segment of that land area representation in one of the bodies.

MR. : Preserving county lines.

MR. : We haven't encountered that argument yet.

(At this point on the recording tape there are so many voices overlapping it is impossible to transcribe the discussion with any degree of accuracy.)

THE CHAIRMAN: If we use the terminology that is employed by the Court, perhaps we could say upon some rational geographic basis.

MR. : I will substitute the word, rational, for reasonable.

THE CHAIRMAN: That's what the Court said, so we will——

37 MR. KAVANAUGH: Well, again, just for purposes of furthering the discussion, using a negative approach, this eliminates, then, any consideration of the Upper House of applying any standards with respect to valuation, taxation, population, industry, the nationality factor, or any of these other ethnic arguments which very often are advanced in trying to achieve a measure of adequate representation.

We are talking now limited to the Upper House. And I am just trying to square in my own mind what we mean when we use the word, "geography." We are talking about a land area.

MR. : Land area, geographic.

MR. KAVANAUGH: Exclusive of other considerations.

MR. : That is the way I would express it, yes.

THE CHAIRMAN: Do we have a second?

MR. HARTNETT: Yes.

THE CHAIRMAN: The motion is now open for discussion. Are you ready for the question?

All those in favor of the motion—do you want it read again?

MR. : No. We understand it.

THE CHAIRMAN: All right, all those in favor of the motion signify by raising their hand.

38 It is unanimous.

I have one other preliminary matter for discussion that I think ought to be brought before the committee, and that is this: We have agreed here that we must come up with something that is practical in the sense that we feel it would be afforded a fair opportunity of consideration of passage, whatever we come up with. From this point on, do you feel that before we take any definitive action, that whatever resolutions or reports we set, that they be accepted tentatively with the thought in mind that each of us before we make a final, conclusive vote upon the important subject matter, should go back to our respective counties, call the members of the General Assembly into conference, and tell them about what our tentative conclusions are, and get their reactions to our tentative conclusions, solely from the point of view of being able to advise each other, when we assemble again, as to our own reaction as to whether this is practical from the point of view of any hope of success?

MR. HARTNETT: I wouldn't want to make final recommendations until I went and consulted with constitutents.

THE CHAIRMAN: In other words, there is a possibility that we may come up with something that we feel is rational, which we feel is proper, but which from a practical point of view, in the framework within which we view the word, practical, when we sound out the members of the Legislature, we will say, well, this has no hope of success.

MR. KAVANAUGH: I wonder if we ought not to remind ourselves that in a sense we are an ad hoc group of still a parent organization which is one representative of the complexion of the community and State, and since we have been called upon to make a report, that as we adopt certain parts of it seriatim as we go through this arrangement, it has never been my understanding that all of the parts necessarily must equal one hundred. I can agree with certain parts from time to time, of the whole. But in viewing the entire report which we may be called upon to submit, I may have fundamental differences of opinion, seeing the various parts in relation one to the other.

Now, I subscribe wholeheartedly to the first two things that have come up. But I can imagine, because I am a human being, that as this thing shapes up, and all of its pieces fall in, the jigsaw may not form a perfect square. It may be rectangular, or it may even be some other shape which geometrically may not agree with the total concept of my system, my philosophy of representative government.

And again I remind all of us that our function is a limited one, both as to scope of the matter and as to time.

As I understand early remarks, the week of the 23rd is heavily encroaching upon all of us.

THE CHAIRMAN: This is on preliminary matters.

MR. KAVANAUGH: No, this is the final report, as I understand it.

MR. : During the week of the 23rd, we should make a report to the committee, and arguments will be

held before the Federal District Court on the motion to stay.

Now, both of you gentlemen have raised in my mind the question of our function and scope.

Are we to report back to the committee what we think would be desirable, what we think might succeed both in court and in the Legislature? Or are we to report back our findings after sounding out our respective districts?

I think that the matter might be extremely desirable, but I wonder if we have the time to do that at this time.

MR. POPPITI: I think the latter function is going to be the function of the committee of the whole. Once we have filed a plan which presumably will be representative of what we think coming from our different sections of the State is a palatable plan, then it is going to be up to the political leadership to evaluate and see whether or not it can be put in front of them.

41 I think that is really our more basic function here.

MR. HARTNETT: I think that all that Mr. Kavanaugh has said is that he, and I agree with him, would like to reserve the right to vote against the final recommendation or recommendations, whatever they may be. And I agree. I think the fact that we might all go along with all of the parts, yet I would like to reserve the right to—I am not saying I will—to vote against the final recommendation or recommendations. There may be alternative recommendations, for all we know.

MR. KAVANAUGH: I might also add this, that if there are ten parts, and I have voted in favor of all ten, I am going to be in pretty much of a bind not to subscribe to the total picture.

Now, this sounds a little bit facetious. It is not intended as such, but at this point in our proceedings I have no idea what the ultimate direction is going to be.

All I am saying is that I am saving my vote as to the total. Now, piecemeal I am certainly in accord at this point with what has been said and what has been done.

I would like you to continue if you have other items to add to your series.

MR. : I thought we could get certain preliminary matters out of the way, and then maybe stop
42 talking about those and move on. That is all I had in mind.

THE CHAIRMAN: I do get back to this problem Mr. Poppiti has stated, that he felt that we should sit here passively and view the technicalities of the situation and then take what we feel is proper and practical back to the committee, and then let them sound out the members of the Legislature.

I can see two bugs in that particular approach that I want to lay before you. One, timewise it may delay the matter beyond the time that it would take us to arrive at certain tentative or preliminary conclusions subject to a final vote on the whole, as Mr. Kavanaugh has pointed out.

If we could take back some of these tentative conclusions to our respective counties and sound them out and then bring back to this committee the benefit of our own sounding out, we may come up with something——

MR. : Mr. Chairman——

THE CHAIRMAN: I don't know how it works in New Castle County, but as far as my County is concerned I think perhaps Mr. Johnson and I can say that we would have no great difficulty in getting a considerable majority of our representatives together at a suitable place and sound them out in a matter of 12 to 15 hours and come back here with our findings.

MR. : Well, Houston——

43 THE CHAIRMAN: And thus expedite things. I would hate to see us come up with something that we sitting here by Delaware Memorial Bridge feel is not only rational and proper, but practical, and then have it go before the Central Committee, and they sound it out, and at that

particular stage they say, we don't think this is practical. Go back and work some more.

Mr. KAVANAUGH: Mr. Chairman, I would like to acknowledge the presence of the Press and say that the members of the parent organization are going to read what we have so far deliberated on in tomorrow morning's papers.

THE CHAIRMAN: Perhaps you think we will get it by phone call. (Laughter.)

MR. POPPITI: Let me clear one thing. I hope you didn't get the impression that I will be operating in a vacuum. Because I will be constantly in touch with the I think all of us will.

MR. HARTNETT: I think we are getting ahead of ourselves. I think we ought to proceed to get the plan, and then discuss how we want to implement it. And I think the only question here is—and maybe we can all agree on it—as Mr. Kavanaugh has said, that we all of us reserve the right to vote, yes, or, no, on the final plan or plans when we evolve it. That's all.

THE CHAIRMAN: All right, does somebody want to put that in the form of a motion?

MR. HARTNETT: Well, I don't think we have to have a motion.

THE CHAIRMAN: I just wanted to be sure that——

MR. HARTNETT: Understand, I have no power or authority—(Unintelligible overlapping.)

THE CHAIRMAN: I understand, but from a personal point of view as you are called upon to vote on each segment of the plan, it is understood that by voting upon each segment of the plan, you are not surrendering anything with respect to your vote on the final plan.

Very well.

MR. KAVANAUGH: I would like at least to conclude my own thinking on this matter, that we proceed with dispatch, and due deliberation, to the consummation not only of legislation, which is our function, but also a report and rec-

ommendations to accompany the legislation, and with all deliberate speed.

MR. : Amen.

(Following a recess:)

THE CHAIRMAN: Shall we reconvene?

I have no committee on the dispatch of business, and I am sort of shooting from the hip, so to speak.

I have two suggestions to make to you at this time as to how we proceed from this point on.

We have conceived as our job to consider a constitutional convention and a specific plan for reapportionment of Delaware—one or the other, in our final report.

Now, I can proceed from this point on in one of two manners. I suggest that we divide ourselves into two committees, and that these committees meet and formulate a committee report with each of the aspects of our problem, or start right here now and take up first one, and then the other, and have each of us speak to it as to, Number One, the consideration given in our report to a constitutional convention in the light of the "Sword of Damocles" which is hanging over the State of Delaware. Then call upon each of us to lay before the committee our own present thinking as to the kind and type of plan we ought to discuss, argue, and come to some final conclusion on with respect to a specific plan of reapportionment.

Now, I would be perfectly willing to entertain discussion at this time as to how we should proceed now, whether to divide up into two committees and get to work on one aspect, and the other aspect to report back I would appoint a committee, say, as to specific plans of apportionment, and I would conceive that they would consider a number of plans of apportionment, and put it on a report as to what types of plans of reapportionment we should consider without taking into consideration the relative merits of any of those plans, so we can knock our heads together on the various plans that the committee thinks up.

MR. SCHMITTINGER: Mr. Wilson, I wonder if I might, before we get into that, see if I understand where we have left off.

I would like to put a motion, and I do make this motion, that the Upper House have as its geographic basis the three counties as presently constituted, and that each of these three counties have equal representation in the Senate.

MR. HARTNETT: I would like to second that.

THE CHAIRMAN: We have a second.

MR. HARTNETT: I would like to comment on that a little bit.

THE CHAIRMAN: Yes. Perhaps I should suggest three committees, or three areas of discussion.

MR. HARNETT: I don't think we should have committees yet. I think we ought to proceed and try to find out how close we are to what we think would be a fair reapportionment plan that would have a reasonable chance of being enacted. I don't think we are going to arrive at it tonight.

I would like to know—maybe we are not very far apart

Maybe we are very close in our thinking. And I

47 am inclined to think more so as we go along here tonight. Because if we are close on what we think would be a fair reapportionment, naturally that would affect how I would vote on the question of a constitutional convention, or by a constitutional amendment.

Instead of having a committee go off and bring back something that may not be anywhere near what the consensus is here, we ought to try to get the consensus of what we feel would be a reasonable and practical reapportionment plan, and I think Harold's motion is one step in that way. If his motion meets with the approval of everyone, and maybe it will, then we have disposed with the Senate, and we can proceed with the House.

THE CHAIRMAN: Very well.

MR. POPPITI: My personal feeling along those lines is that the Senate would remain undisturbed, and continue as a

17-member body, and that we reapportion the house on a mathematical basis, preserving the representation that is there, and in a sense expanding the representation. So that we would guarantee those smaller geographic, thinly populated areas an opportunity to grow, and continue to be represented in both branches of the Legislature.

MR. KAVANAUGH: You wouldn't favor any consolidation of existing representative districts where they are very, very thin?

48 MR. HARTNETT: Couldn't we dispose of the Senate, at least get our ideas on the thing first? There are two ideas with respect to the Senate thus far. Could we see if there are any others?

THE CHAIRMAN: Before we get to that, I am going to amend my prior remarks with respect to three areas of discussion, that is to say, a plan for the Senate, a plan for the House, and a plan for a constitutional convention. Do you want me to take them up and get our respective thinking on them now one by one, or do you want committees appointed to go to work on alternate plans which the committee feels this committee as a whole should consider and thresh out and knock our heads together on?

MR. KAVANAUGH: I think this committee is small enough that we can act as a committee of the whole rather than to split off into subcommittees.

MR. SCHMITTINGER: I don't think you could examine some of these problems separately from the others.

THE CHAIRMAN: No, but I mean the committees would formulate the plans to be examined together for the committee's report. I don't think that the committees would necessarily come up with something they, themselves, would recommend, or would be final. Within these various segments, there would be alternative plans which we

49 would consider, and I was wondering whether or not all of us are in a position to say these are all of the plans that should be considered, or should committees give some thought to Plans One, Two, Three, Four, Five

for the House, and One Two, Three for the Senate, and Plan One or Plan Two for a constitutional convention, so that we would have the benefit of not narrowing our thinking in respect to the plans. This is the problem here.

MR. SCHMITTINGER: I think you are right; but on some of these things we may not have a problem.

MR. HARNETT: We may get one, but we are not that far along yet.

MR. JOHNSON: I think maybe we are making it too tough. I think Mr. Poppiti started the ball rolling here. He expressed his opinion as to what he thought the Senate should be.

MR. : Well, let's give it a try.

THE CHAIRMAN: Without committees, all right.

We will take up the Senate now.

MR. KAVANAUGH: Before we address ourselves to that, Frank, you had started out by giving a unanimous expression, first of all, with respect to the matter that there will be a bicameral General A mbly.

MR. POPPITI: We are beyond that, aren't we?

MR. KAVANAUGH: Yes. Secondly, that the Upper
50 House, or Senate, would be apportioned on a geographical—a rational geographical basis.

Would it now behoove us to say with respect to the Lower House, or House of Representatives, that it is the consensus of this group unanimously that it be reapportioned on a population basis?

MR. O'DONNELL: You are directing that to me?

MR. KAVANAUGH: Yes.

MR. O'DONNELL: I can't speak for the group, but my own opinion would not be that. My opinion would be that—we are getting away from the Senate, but I would recommend that the present representative units be retained, and that a mathematical figure be fixed so that when any representative unit achieves another measure of that figure, additional representation will be added.

This is the Federal system for the House. Delaware, even when it was so small, had one. When we achieve a certain number, we will pick up——

MR. SCHMITTINGER: I would like to say I agree with your thinking along these lines.

MR. HARTNETT: I think we would agree with your statement that the House would recognize population——

THE CHAIRMAN: Well, Gentlemen, I would like the committee to consider these one by one with the thought in mind that as we consider them one by one our conclusions would be purely tentative in the light of the whole.

SEVERAL MEMBERS: Sure, sure.

THE CHAIRMAN: Otherwise we are going to leap from one to the other. So I am going to direct your attention back to the Senate.

We are at this particular stage in the Senate where we must now consider what is a rational territorial or geographical plan of reapportionment of the Senate.

MR. POPPITI: I would like to reiterate that in my opinion the Senate should be left as it is, that in my opinion it does already represent geographical areas, and it would seem to me that it should be preserved as is, that we should address ourselves principally to reapportionment of the House of Representatives.

MR. O'DONNELL: I think it is rational at the present time. I think it can be defended in its present status. I think it could be more rational, but I believe it is rational at the moment, and I would like to see it left as it is.

THE CHAIRMAN: Senator Johnson.

MR. JOHNSON: Well, I would be willing to let New Castle County retain their five, Wilmington two. I would like to see Kent and Sussex Counties raised to seven, so that we would have seven, seven, seven, on an equal county basis.

MR. : I would subscribe to that.

MR. JOHNSON: And rather than have them selected at large from each of those counties, I would suggest the first five Representative Districts elect one, the second five elect another Senator from each county. That would be recommendation.

THE CHAIRMAN: All right.

MR. HARTNETT: I subscribe to the idea that there ought to be equal representation in the Senate from each county. I appreciate Mr. Poppiti's position, and can well understand why. And it may be that you will make note that there are two different theories, and proceed.

THE CHAIRMAN: Mr. Kavanaugh.

MR. KAVANAUGH: Well, can I just talk for a minute?

THE CHAIRMAN: You can talk right.—(Laughter.)

MR. KAVANAUGH: Well, sometimes, you know, talking out without coming to any definite conclusion helps some, at least helps me sometimes to formulate.

As I view the New Castle County picture where you have five Senators from the area outside of Wilmington, and two Senators in the City of Wilmington, there was a time when Wilmington was the center and only urban unit
53 within a county of any significance or size.

We are addressing ourselves here to posterity, as I view it, not to an immediate, temporary, this-trip-only type of solution. I can visualize in the future with the construction of a twin unit for the Delaware Memorial Bridge, the ferry at the end of our State, the completion of the over-the-water and under-the-water route at the tip of the Peninsula, where the entire length of the Peninsula is going to expand measurable population increases, increase in industry, increase in many of the aspects of living that normally designate a vigorous economy in a community, and that these things are necessarily going to cause the development of urban communities.

We are already witnessing a substantial increase in the City of Newark. Dover is expanding. Seaford is a logical area for expansion. And other communities which are

towns today may very well in our lifetime be sizable urban metropolises.

I think we should remember that if you preserve the concept of a geographical designation uniquely, singly, and exclusively for the City of Wilmington, is it your intention to foreclose Dover should it attain a population or an importance equal or comparable with 95,000 people and the industry of Wilmington?

I think, after Baker vs. Carr, if it was our intention, we could not bring it into being. I think that
54 we will always have reapportionment with us from now on, so that any plan we might set up will not be with us forever, but it will be until some major change is brought about. And I think if the Legislature or the constitutional convention does not take cognizance of that in the future, we will again have some litigation in the Federal courts.

MR. : Then you want to continue the rigid type of constitutional provision that we now have? You don't want to build into it a self-executing type of Senate?

MR. POPPITI: No, we are only talking about the Senate as part of a rational plan that we are admonished to come up with in the Supreme Court's decision.

MR. KAVANAUGH: But you can have a plan which can be divisible and rational with respect to the Lower House and irrational with respect to the Upper House.

MR. POPPITI: Well, I would go a little further than the Supreme Court. I say we have to come up with a rational plan that has a chance of being passed in Delaware. We are faced with the Delaware situation.

And, of course, we take the Senate as one branch of the plan, and we take the House as the other, and in the House we try to achieve the flexibility with which you are concerned.

55 MR. KAVANAUGH: Well, no. You just sacrifice the earlier remarks about a plan which would be a stopgap measure as far as the Court is concerned. If you are

saying that we have got to come up with something that the Legislature is going to adopt.

MR. POPPITI: This is our objective, yes, with the litigation in a sense being the gun at our back.

MR. KAVANAUGH: This doesn't help your Court case any.

MR. POPPITI: Sure, it does. Our objective here is to get a plan——

MR. KAVANAUGH: What you are saying is that anything we can come up with that there is a fair hope that the Legislature will pass, the Court is going to accept. And that is not true. It is a non sequitur.

MR. POPPITI: No, I didn't say that. I said we are trying to evolve a rational plan, which, if it were to be tested by the courts, it would stand the test. That is what we are seeking here.

THE CHAIRMAN: Gentlemen, I think perhaps the Chair can clarify this.

What Mr. Poppiti says is this: That we have a two-pronged problem. We must come up with a plan which is not only palatable to the Court, but also palatable
56 to the General Assembly. This is what we are saying.

MR. POPPITI: Yes, this is our ultimate objective.

THE CHAIRMAN: All right, you continue, Mr. Kavanaugh, with your thinking on this question of a rational plan of territorial apportionment, or geographical apportionment of the Assembly.

MR. KAVANAUGH: Well, I am not expressing my own belief at this point. All I am doing is narrating what I have understood to have motivated our Convention Delegates in 1896. At that time they achieved a compromise in the Senate on the theory that the three counties, exclusive of Wilmington, in the Upper Chamber were areawise, populationwise, and economywise comparable measures of representation for the Upper Chamber; that Wilmington in its exclusive capacity was an entirely different political entity at that time.

All I am addressing myself to is the fact that this no longer obtains. The situation is different, and that according to your views, the courts are now going to ride herd on us from here on out, should there be any inequities at any time.

Then perhaps we should consider from a pragmatic standpoint that which will work immediately, which will be within the framework of a rational plan with reasonable standards, and not give too much consideration to
57 the future development and growth of the State as a whole, or the counties as governmental units within the State.

This is certainly not what you mean.

MR. O'DONNELL: I said, to repeat, that I think a plan for the Senate which is based upon a rational geographic basis would be acceptable to the courts. That is exactly what I said before, and I haven't said anything different now.

MR. HARTNETT: Either of these two plans which we have talked about would be acceptable. Either the Senate on a strictly county basis, or the Senate as it now exists, either would be O. K.

MR. POPPITI: Yes, but I think Frank says one of the Senatorial plans coupled with a flexible plan for the House.

MR. HARTNETT: Oh, yes, of course.

MR. POPPITI: —We think would get us by. Sure, that is——

MR. HARTNETT: But I think it should be understood, assuming that we have a more equitable apportionment of the House, either the Senate as it now exists or on the equal county basis would be acceptable.

THE CHAIRMAN: Gentlemen, I want to get each persons' original thoughts down before us, and then we will get back to a question of debate on the thing, and I will
58 let Mr. Kavanaugh continue his original talk.

MR. KAVANAUGH: Let me conclude, then, in order not to delay this much further.

I apologize to you, Frank. I was under the mistaken impression that you had said that you preferred at the polling of the committee members the maintaining of the status quo in the Senate as it is presently comprised under the Constitution, Article 2, Section 2, namely, five for rural New Castle County, and two for the City of Wilmington. This is not what you said.

MR. O'DONNELL: I did say that. And I also said that I believed that that arrangement was a rational basis which would be upheld.

MR. HARTNETT: But you are not saying the other one would also not be acceptable?

MR. O'DONNZLL: I haven't said anything about any other plan, because I haven't talked about any other plan. But in my opinion, the arrangement which we presently have in the Senate is rational and can be defended. I still believe that it can. There is some basis for it. There is some foundation for it.

The Court has said that any crazy quilt for which there isn't any foundation or any rationale will not be upheld.

I think we have a rationale. I think we have a basis
59 for it, that it is reasonable and——

MR. SCHMITTINGER: Would you like to state what that is?

MR. O'DONNELL: I think our counties are, roughly speaking, rather similar in geographic areas; that it has the historic basis; they are governmental units that govern the people in that area, and it is not just something that was picked out as a matter of political whim. It is someting that has this basis. And I think the courts would uphold it.

MR. SCHMITTINGER: Aren't these reasons why we should have equal representation in the Senate? The reasons you just cited?

MR. O'DONNELL: On the basis of population? Or equal county?

MR. SCHMITTINGER: County.

MR. HARTNETT: What is the basis for the two additional?

MR. SCHMITTINGER: What is your rational basis for that?

MR. O'DONNELL: That Wilmington is a large geographic unit.

MR. HARTNETT: So is Brandywine Hundred.

MR. SCHMITTINGER: So is the City of Dover.

Mr. Poppiti's good clients are building so many houses down here that we are going to want a separate
60 Senator just for Dover. (Laughter.)

THE CHAIRMAN: All right, let's get back to our original discussion.

MR. KAVANAUGH: In order to continue, I will conclude my remarks. I am in favor of equal representation on a county basis geographically in the Upper Chamber. I will just let it go at that.

THE CHAIRMAN: All right.

Mr. Wilson.

MR. E. S. WILSON: I agree with Frank that, as a non-lawyer, one of the few, I believe the Court would accept a five-five-five plus two for Wilmington apportionment of the Senate, because it is an historic fact that it isn't a crazy quilt.

However, I am perfectly agreeable with Tom's suggestion of seven-seven-seven, provided at the time we recognize that we are to look at this House thing on a population basis very carefully.

MR. SCHMITTINGER: That is understood.

MR. E. S. WILSON: Oh, yes, that is understood.

THE CHAIRMAN: That caveat is always on the table.

I want to state very briefly my original thinking on this, and let it out for your consideration.

As I read the Debates of 1897 with respect to the
61 Senate, the division was five-five-five, as far as Sussex County, which was a completely rural area, Kent County which was a completely rural area, and rural New Castle County, which by its very term was a rural area. It so happened that at that particular time, accord-

ing to the census of 1890, they ranged from 32, I think, or 33,000 population. But then it was pointed out in those Debates that here was Wilmington with a population of 75,000. If you take 35,000 as the mean, then you come up with 5 into that, and you get 7,000. If you take 70,000, and divide that by 2, you come up with 35,000, and you have the 5 to 1 equal split.

I would make this suggestion to the committee, that if we are going to apportion the Senate on a rational geographical basis, that we should not even so much as pay lip service to an intense, or thickly populated metropolitan area in the sense of giving it representation per se as such.

I think what should be done is very possibly—let me back up just a minute.

The reason I say this is because if we pay lip service to and give or retain two Senators for Wilmington as such, perhaps the Court would say that the State did this in recognition of the fact that this was an intense metropolitan area, and therefore it has put into this particu-
62 lar part of its plan recognition that representation even in the Senate should be on a population basis. And having done that it would view that particular house in the light of whether or not having given lip service, or having given recognition to this intensely populated area, whether or not in that light it would be invidious and not rational.

I think that if we are going to stick to some rational geographical basis, we should stick to it and not put into the plan for the Senate or retain any plan for the Senate of two Senators for a particular area which we all know is intensely populated.

If we come up with seven-seven-seven, then I think it should be up to New Castle County to put their heads together and say, what do we feel are the territorial districts to which they should be allotted?

Now, in doing that those territorial areas can be defined not in terms of a specific metropolitan area by Wilmington, but they should be defined as given territorial segments of New Castle County which by happenstance may include or may not include all or a portion of Wilmington with respect to a specific Senatorial District.

Do you follow what I am trying to say?

MR. SCHMITTINGER: Yes.

63 THE CHAIRMAN: I don't want to sow the seed into the Senate, the seed of a plan that pays lip service on its face or otherwise to a given metropolitan area.

I think if we are going to recognize the county as the territorial division, then it should be on a county basis, and the subdivision within that county be on a specific territorial basis rather than on the metropolitan. For, as Mr. Kayanaugh points out, if we do it for Wilmington, we may be called upon at some time to do it for Dover or do it for suburban Wilmington per se.

MR. POPPITI: I would say, addressing ourselves to the practical aspect, if we are going to even things up, using the counties as the geographical basis, I think that such a plan would have a chance if we were talking in terms of increasing the representation in the Senate from Kent and Sussex Counties without disturbing the allocation of the members of the Upper Chamber in New Castle County, or in Kent and Sussex Counties. (Unintelligible overlapping of remarks.)

MR. POPPITI: I would say I think that is a better approach——

THE CHAIRMAN: Let me get back to what I was trying to say. The present constitutional provision deals with Wilmington as an incorporated municipality as such.

64 The Court has said many times, and perhaps will say again many times, that a particular legislative act at the time of its adoption may well be Constitutional; but changing events, changing circumstances, and even

new opinions of the Supreme Court will, upon again reviewing it, render it unconstitutional.

So I am wondering whether or not the present plan of the Senate, in that it deals with Wilmington per se, does not have the seeds of paying lip service, or bowing to an intensely populated area? And this I think we should seriously consider staying away from in the plan, although in the ultimate evolvement of the plan the geographical area of the particular Senatorial District or Districts may comprehend substantial parts of the City of Wilmington, but not denominated as such.

MR. HARTNETT: Yes, but Wilmington is not one district. Wilmington is split into Senatorial Districts. And all New Castle County is spit into Senatorial Districts. It just so happens that two of the Senatorial Districts come within the City of Wilmington. But it is not saying that Wilmington as such is entitled to two Senators.

THE CHAIRMAN: Well, let's see what the Constitution says.

MR. SCHMITTINGER: Just like in Dover——

THE CHAIRMAN: This is what the Constitution says:

65 MR. SCHMITTINGER: Just like the City of Dover, half of the city is in one Senatorial District, and the rest is in the other.

THE CHAIRMAN: Let's see what the Constitution says first. On the Senatorial Districts in New Castle County.

MR. SCHMITTINGER: It describes by streets in Dover.

THE CHAIRMAN:

(Unintelligible overlapping of remarks.)

MR. POPPITI: As a matter of fact, the two Senatorial Districts in Wilmington are badly out of balance as far as population is concerned.

MR. : Oh, yes, there is no question about that.

MR. SCHMITTINGER: Do you want to hear it?

MR. POPPITI: Yes.

MR. SCHMITTINGER: Well, the First Representative District of New Castle County, this is the House.

THE CHAIRMAN: The Senatorial District is what we want.

MR. SCHMITTINGER: Senatorial Districts in New Castle County are and shall be as follows:

No. 1. All that portion of the City of Wilmington lying north of and bounded by a straight line including the central line of 8th Street extending from the Delaware
66 River to the westerly boundary of said city.

No. 2. All that portion of said city lying south of and bounded by a straight line including the central line of 8th Street.

No. 3. Brandywine Hundred, and so forth.

MR. POPPITI: There is no reference to Wilmington at all.

(Unintelligible overlap of remarks.)

MR. POPPITI: I would say as a practical matter, I think we have a better chance to achieve what Senator Johnson suggested initially by saying that we would increase the representation in the Senate for Kent and Sussex Counties so that the basic geographical unit will become the county, without disturbing——

MR. HARTNETT: I agree. I don't think we should intentionally disturb anybody, if we can help it.

THE CHAIRMAN: When it comes to the House, we are going to have some difficulty. (Laughter.)

MR. : May I ask, what is the issue with respect to the Senate in the suit?

MR. O'DONNELL: They have treated it in the same manner as they have treated the House. They have asked for a reapportionment of both.

67 MR. POPPITI: This is what was done in Maryland, too. It was with regard to both chambers.

MR. SCHMITTINGER: They didn't get it yet.

MR. POPPITI: No.

THE CHAIRMAN: And this is what is under attack in Michigan, the senate as such without any reference at all to the house, if I may say. And that has been——

MR. HARNETT: But several cases have upheld the right of the senate not to be apportioned populationwise.

MR. SCHMITTINGER: I think the key to it is how the house is treated.

MR. POPPITI: Yes, because then you can say that you have a rational plan for your state.

MR. SCHMITTINGER: There is one other aspect of this that I think we have all thought of, and that is the more identifiable we can make the final plan we come up with, with the Federal system, I think the more likely it is going to be acceptable.

MR. POPPITI: This I think was the broad guideline that we have to establish here.

MR. : That is the basic rationale that's being used as a basis to defend the plan, similar to——

THE CHAIRMAN: Then the thinking is to retain the
68 old, historic Senatorial Districts with two and five added to——

MR. : No, not two and five, but to increase. And how they would do that would depend upon its Legislature, I assume, what each county——

MR. : Actually when we say at large we are getting away from geographical boundaries.

THE CHAIRMAN: Only in the counties—the counties, that is where we retain them. Not in the inter-county sense.

MR. : No. not in the inter-county sense. So I think they should be Senatorial Districts.

THE CHAIRMAN: Geographic——

MR. : Inter-county geographic Senatorial Districts.

MR. SCHMITTINGER: Well, I would like to call for a vote on that motion.

THE CHAIRMAN: What is your present motion? Do you want to amend it?

MR. SCHMITTINGER: You mean by adding seven, making it up to seven?

THE CHAIRMAN: Yes.

MR. SCHMITTINGER: Well, the present motion as seconded by Mr. Hartnett was that the geographic basis in the Upper House be the three counties as presently constituted.

69 Then I have said before with equal representation from each county. Now we can actually spell it out and say seven Senators from each county.

THE CHAIRMAN: Do you want to amend the motion, and as part of that motion you intend to retain in New Castle County the present historic inter-county Senatorial Districts——

MR. SCHMITTINGER: Well, I do, but I think that that would be a separate motion.

THE CHAIRMAN: Oh, very well.

MR. SCHMITTINGER: You make it, then.

MR. POPPITI: Well, let's put this one first.

THE CHAIRMAN: Is there a second to that motion as it has been amended?

MR. HARTNETT: Yes, I second it.

THE CHAIRMAN: All right, any further discussion?

Are you ready for the question?

All those in favor signify by raising their hand.

Unanimous.

Now, let's go to New Castle County.

MR. POPPITI: I move, so far as New Castle County is concerned, that the present Senatorial Districts be preserved.

MR. SCHMITTINGER: I will second the motion.

THE CHAIRMAN: Any discussion, gentlemen?

MR. : Yes. I am inquiring now for my own

70 edification. As I understand, the present seven Senatorial Districts, does anybody know whether they are roughly land areawise reconstituted in approximate land area?

MR. SCHMITTINGER: Well, I can tell you——

MR. POPPITI: You have two in Wilmington, and five outside of Wilmington. You have ten hundreds outside of Wilmington, and they embrace either one or part of an-

other hundred, or two hundreds. This would seem to have been the unit of measure used.

MR. SCHMITTINGER: That is right.

MR. POPPITI: Jesse Watson, for example, represents, his Senatorial District is Appoquinimink and Blackbird.

Cal McCullough has part of Christiana and New Castle.

MR. : Meg Manning has Mill Creek and part of White Clay Creek.

MR. : Jerry's question was directed to whether they contain roughly the same amount of land area. And this discussion I don't think is on the point.

I don't know, but looking at the map, it depends upon what you mean by roughly, I would say the largest area seems to be the Appoquinimink-Blackbird.

MR. : Which one are those?

MR. : The last ones, on the bottom of your
71 map, 14 and 15.

MR. : That seems to contain the largest geographic area.

THE CHAIRMAN: Let me mark these out and, then we can take a look at them.

(Discussion about map areas not transcribed.)

MR. HARTNETT: I think it is obviously are not.

MR. : The answer is, no.

MR. : Well, what happens to my affirmation of your criteria that we consider the Senate only on a geographical basis?

MR. POPPITI: Well, we are not geographical in the sense of area, land area. Geographical in the sense of trying to represent subdivisions of the county, which is what they apparently did. They combined these hundreds and parts of hundreds.

MR. : My problem is what we originally agreed upon, that second thing that Frank brought up. He went

very specifically and expressly into what the sense of this group was with respect to the word, "geographic."

MR. POPPITI: Well, we have done this.

MR. SCHMITTINGER: We have just defined it as these three counties, as presently constituted.

72 MR. POPPITI: Sure. We have just done that.

MR. : Well, are you telling me that the constitution of the Senate, where you preserve the Senatorial Districts as they are now comprised in the County of New Castle, is on a geographic basis?

MR. POPPITI: Yes, yes.

MR. O'DONNELL: That is not population. They represent areas.

MR. POPPITI: They represent areas.

MR. : All right, the difficulty we have getting over the hurdle of population is not, is entitled to equal protection of the law, under the Baker-Carr Case, is a disproportionate amount of representation.

To get back to a very fundamental point, and that is, whether one house may be on a geographical basis if the other house is on a purely population basis. And this is the Federal system.

(Unintelligible overlap of remarks.)

THE CHAIRMAN: And when you speak of the Federal system, look at Delaware and New York.

MR. POPPITI: That is right. What the heck, we have got two Senators, and so have they.

MR. : Well, I have no problem when you
73 get to New Castle County equals seven.

THE CHAIRMAN: But when you get inside New Castle County, you become concerned.

MR. : Because you are no longer applying the Federal rule.

MR. POPPITI: We are, too.

MR. O'DONNELL: We are precisely. Look at it.

MR. POPPITI: I come from Wilmington, which is my primary concern, but you have to recognize that areas like Blackbird and Appoquinimink, which are largely rural, farm communities, have got to have a voice in this government someplace which will give them an opportunity to be able to compete with the heavier voice which we presumably will have in the other branch of the Legislature. And I think this is what they tried to achieve when they laid out the Senate along these lines.

THE CHAIRMAN: Looking at the map, and keeping the Federal system in mind, looking at your map only on inter-New Castle County, let's assume that No. 1 represents a Senatorial District which is Delaware, as far as size is concerned. Or let's put it another way. Yes, No. 1 represents Delaware as a small geographical area, and that No. 6, which includes 11, 12, and 13——

MR. : Well, let me say this. You regard each Senatorial District, then, as the unit of comparability to the Federal system, rather than each county being the unit of comparability?

74

MR. : No, sir. (Unintelligible overlap of remarks.)

THE CHAIRMAN: Also when you speak of the State it is the county that is the unit. When you speak of the county it is the Senatorial District which is the unit which you are comparing.

MR. O'DONNELL: And in light of the Federal system, the Senatorial units, while they are based on geography, do not contain the precise same amount of geography, but they are based on geography, such as Delaware versus Texas is based on geography, and it is historic.

MR. POPPITI: Yes, that is right.

MR. KAVANAUGH: The two Senators from Delaware and the two Senators from New York are not elected by U. S. Senatorial Districts within the state. Now, this is where I say we have departed from the Federal concept. Because the minute you say that New Castle County is two units,

rural New Castle and the City of Wilmington, you are not following the Federal concept of Senatorial representation from the various districts.

MR. POPPITI: We haven't been saying that, Jerry.

THE CHAIRMAN: We are giving everybody seven.

75 MR. KAVANAUGH: But you are not very consistent.

MR. JOHNSON: You want seven for Wilmington, I think.

MR. : At least. (Laughter.)

MR. POPPITI: We can't make a pure analogy to the Federal system, but it is the basis from which—it is the point of departure. Then we have got to try to apply that to Delaware.

I keep hitting back at the practical aspect. We have got to try to evolve a plan which is going to be palatable to all these people, because there is going to be a giving up of power and giving up of certain privileges by each segment of the population here.

MR. : Well, let me not delay the discussion here any further. Where are we now?

THE CHAIRMAN: Well, we are on inter-New Castle County.

MR. SCHMITTINGER: Mr. Poppiti made the motion with respect to New Castle County, that the present Senatorial Districts be preserved, and I seconded it.

THE CHAIRMAN: Did he use the word, "historic?"

MR. SCHMITTINGER: Where was that?

MR. POPPITI: That the present historic Senatorial Districts be preserved.

MR. : You realize, Mike, we are giving up something there.

76 MR. : Because by the time this is through we are going to have 30,000 more in the five counties surrounding Wilmington, but we are not saying anything about Wilmington, too. We have got 58,000 in Brandywine Hundred, and our Christiana District has 20, so we are——

MR. POPPITI: Of course we are optimistic, too. We are hoping there will be some rejuvenation in Wilmington in our population.

MR. KAVANAUGH: But that is not the basis on which we are doing——

MR. POPPITI: Oh, no, we are just talking here.

THE CHAIRMAN: We are not dealing with Wilmington, per se.

MR. : We are not dealing with people, either.

MR. : No. we are not dealing with people.

MR. SCHMITTINGER: The question.

THE CHAIRMAN: Any further discussion? (No response.) If not, all those in favor of the motion signify by raising their hand.

It is unanimous.

MR. SCHMITTINGER: I would think that logically you would want to treat how the two new Senators in each of
77 the lower counties would be handled, but I would suggest that this time we defer that. I think we could have a much more fruitful discussion if we go on to the House.

MR. E. S. WILSON: Let me say one more thing. Can we go this step, or not? Can we go to the step that the two new Senators for each of the counties be allocated on a re-subdivision of the Senatorial Districts from five to seven, geographical Senatorial Districts?

MR. HARTNETT: I don't know whether I want to go along with that.

MR. SCHMITTINGER: Here is one aspect of that. We have got two weeks, Frank? Are we going to try to redistrict the whole county in two weeks? It just is not——

THE CHAIRMAN: No, but I mean as a matter of principle. Do you think the plan ought to conceive that it should be executed in this manner?

MR. SCHMITTINGER: We accept it as a matter of principle, that the bill that is drawn up would have that to say.

THE CHAIRMAN: Well, then, let's put it on record as a matter of principle, without giving the specifics. That is all I am saying.

MR. HARTNETT: I don't want to vote for that as a matter of principle at the present time I am not sure
78 that I don't favor electing at large. I want to think about it.

MR. POPPITI: Well, you are not being pinned down——

MR. HARTNETT: This is true, but I don't see how we are going to redistrict Kent and Sussex Counties——

MR. SCHMITTINGER: Well, I don't want to get involved in that argument. I might be willing to say that as he suggested, the first five districts should get one, and the second five Representative Districts get the other, but I don't think any of us thought we were going to get as far as we have here tonight, and I don't think we have thought this thing through.

MR. HARTNETT: I think it is getting late, and I would like to hear some of the ideas on the House.

THE CHAIRMAN: All right, do you want to lay aside the question of how the allocation of the additional Senators in Kent and Sussex Counties shall be made?

MR. SCHMITTINGER: This might well be an area where you could appoint a committee—or, I guess we are automatically a committee. (Unintelligible overlap of remarks.)

That's what I suggest, that we just table this and go on to the House.

THE CHAIRMAN: Very well.

MR. : Well, I think it is a Wilmington
79 problem.

MR. SCHMITTINGER: Well, it has to fit in with the whole picture, you are right.

THE CHAIRMAN: Except that we have got to have a consistency here in order to have rationality. Isn't that right?

MR. : Yes.

MR. JOHNSON: In other words, New Castle and Wilmington won't have to do anything.

MR. : That is right.

MR. JOHNSON: Whereas we have a little problem down here.

MR. : You phrased it so nicely. (Laughter.)

THE CHAIRMAN: All right, let's start the discussion around the table with Mr. Poppiti with regard to the House.

MR. POPPITI: My feeling is that we should not come up with any plan that will take away any of the present representation, but rather that we should work out a quotient, or a figure, whatever that formula is, which would ensure that if a particular area achieves that certain figure it would be entitled to at least one Representative.

As I visualize it, suppose we took the unit as, say, 20,000. Certainly Brandywine Hundred, for example, they have 60,000, and instead of having one Representative, they would get three.

An area like, if we take the other end, like Blackbird Hundred, where they have 1,600 people, they would retain their one Representative, but they would know that eventually with the Shell complex, and all that sort of thing, if they ever grew as rapidly, or someday achieved maybe a 40,000 population, they would then have two Representatives.

This would give us flexibility, looking in the direction of the group that Jerry outlined, that we can expect maybe in the next 20 years.

MR. : Well, from a practical standpoint that probably would be the easiest thing to do, but it would increase the size of the House so that instead of having 35 we would have 55——

MR. SCHMITTINGER: It would depend upon the size of the quotient.

MR. : But I don't know that you could defend in the court a 20,000 against 1,600 figure.

MR. HARTNETT: In Idaho it was upheld, this very thing was upheld.

MR. : But it was not by the Federal Court, was it?

THE CHAIRMAN: What you would have to defend, if you have established Representative Districts, that each one of those should have minimum representation. This is what would have to be done.

81

MR. SCHMITTINGER: That's right.

THE CHAIRMAN: Regardless of population.

MR. : And again using your Federal argument that the 446,000 in Delaware are entitled to one Congressman at large, and the 13,000,000 in New York are entitled to 45.

MR. HARTNETT: Delaware wouldn't even be counted.

MR. SCHMITTINGER: Don't you think that another aspect——

MR. POPPITI: What was our last census?

MR. SCHMITTINGER: Four sixty.

MR. POPPITI: Four sixteen?

MR. SCHMITTINGER: No, no, no. Four forty-six.

MR. POPPITI: Suppose we used 20,000, what would we come up with?

MR. SCHMITTINGER: 22. 20,000 into 446 would be 22.

MR. POPPITI: No, but wait a second. If you used the 20,000 formula that I suggested, you would start with 35. Right?

(Unintelligible overlap of remarks about computation.)

MR. HARTNETT: Start with 10 for Kent, 10 for Sussex, and then the population of New Castle County, and see how much New Castle would be entitled to. Well, excuse me, you are right.

82

MR. POPPITI: You start with 35, and then go into the particular area——

MR. HARTNETT: You're right.

MR. POPPITI: Suppose you start with 35. What is the population of Brandywine Hundred?

MR. SCHMITTINGER: 58.

Mike, don't you have to consider whether a fraction of the 20 would entitle you to another vote? I mean a major fraction.

MR. : Major fraction.

MR. SCHMITTINGER: In other words, you can't have twenty thousand and one persons and have two Representatives. If you say a major fraction, it would be 30,000 before you got your two?

MR. POPPITI: Yes, something like that.

MR. : I thought I had that figured out based on 20,000 (Unintelligible overlap of remarks regarding computation.)

MR. SCHMITTINGER: Your second Representative District is 33,000 people. You would be adding one there.

Your 5th Representative District is 30,000.

MR. POPPITI: You would add one there.

83 MR. SCHMITTINGER: Your 6th is 58,000, so you would add two there. Right?

MR. : Yes. I don't think that is such a cock-eyed approach at that.

THE CHAIRMAN: What county are you starting with?

MR. SCHMITTINGER: New Castle. The 7th Representative District would be plus one.

The 10th would be plus one. And that's all.

MR. HARTNETT: That would be six additional.

MR. POPPITI: With six additional members you would wind up with 41. It is not so unwieldly at that. On 20,000.

MR. : Can we defend 20,000 against 1,600?

MR. SCHMITTINGER: Well, I think Mr. Wilson——

THE CHAIRMAN: You defend that on the basis of minimum representation.

MR. : Well, the approach in some of the states has been as to what is a reasonable number for a person to represent. And in the opinion of some of the experts

who have commented on this, 12 to 15,000 has been thought to be a reasonable number to have a legislator represent. I am inclined to agree with those experts. And I would think that while there may be some objection to having such a large House of Representatives, that a unit
84 such as 12,000 or 15,000 were more acceptable, I personally would

MR. HARTNETT: Let's see what would it be at 15,000.

MR. SCHMITTINGER: Don't you have that practical problem of just how large a House can we have?

MR. : You have to balance this.

MR. : You have got to defend it. You threw out a figure about an hour about 30,000 more people in Brandywine Hundred——

MR. KAVANAUGH: No. 30,000 more people by 1965 in the five counties surrounding—the five hundreds surrounding Wilmington. Christiana, White Clay, Mill Creek——

MR. POPPITI: We are working on a project now involving a thousand acres which we anticipate 10,000 houses just in one hundred. I've got a combine of contractors discussing that. That's a 10-year project. You figure four or five to the average home, and that's 100—no, 50,000 more people in one area.

MR. : Well, if your quotient, or figure of 12,000, or 15,000, is not high enough——

MR. HARTNETT: By 1970 it may have to be changed. This is 1960.

THE CHAIRMAN: That wouldn't be practical in New York, a 12 to 15,000 figure.

MR. : Today we received notice that the
85 plaintiffs in the litigation are going to take the position of Mr. Dolan, political scientist. I don't know what Mr. Dolan is going to say, because I haven't spoken to him. But I have read what other political scientists have said. And I believe that if this matter should go to trial now, that the political experts will tell the Court that 12 to 15,000 is a reasonable number.

Now, true, it will make our House of Representatives larger than most of us have ever thought of——

MR. POPPITI: Frank, I was going to say, what is Pennsylvania's House of Representatives? About 500, isn't it?

MR. : Well, the New Hampshire House is 400.

(Unintelligible overlap of remarks.)

THE CHAIRMAN: reasonable to have someone represent?

MR. SCHMITTINGER: Well, that depends upon the area, doesn't it, Frank?

(Unintelligible overlap of remarks.)

MR. POPPITI: I am talking about population.

MR. SCHMITTINGER: But the effectiveness of the Representative you are also talking about.

MR. : Well, certainly the area he has to travel.

86 MR. SCHMITTINGER: Right.

MR. O'DONNELL: In Alaska that might be great factor, but I would think our Delaware area is not such a large factor, and we are talking now about representation of people, purely people. And apparently the people who have studied this have concluded that the number which one legislator may effectively represent is somewhere in the area of 12 to 15,000. At least those whom I have read have so advocated. I have no idea what Mr. Dolan is going to say.

MR. POPPITI: You know, outside of Wilmington we have actually used the hundreds as a convenience as the area of representation, and we would like to keep those hundreds, since they are geographical areas.

Now, you in Kent and Sussex have lost your hundred lines, but we would like to keep our hundreds because it is historic.

MR. O'DONNELL: And they are logical divisions as worked out on the map, too.

MR. POPPITI: Yes.

MR. KAVANAUGH: But I don't see how we can defend 1,600 as against 30,000.

MR. : Because that hundred is being represented in the House of Representatives.

87 MR. SCHMITTINGER: You mean heretofore?

MR. POPPITI: Yes, heretofore.

MR. : But the Court is not going to say anything about that.

MR. O'DONNELL: I think it would have to be population——

MR. POPPITI: What would we come out with at 15,000?

MR. SCHMITTINGER: Or major fraction thereof?

MR. POPPITI: Yes.

MR. SCHMITTINGER: Well, your second you would add one.

MR. : Speaking just of New Castle, now?

MR. SCHMITTINGER: Yes. For your 5th you would add one. In your 6th you would add three. In your 7th you would add two. In the 8th you would add one. In the 10th you would add two. Right?

MR. POPPITI: Yes, you would add two, that is right.

MR. : Three, if you used a major fraction.

MR. : None in the lower counties.

MR. SCHMITTINGER: Well, the 10th District of Sussex might be entitled to one someday.

MR. POPPITI: You would have 10 as against 6. You are talking about 45.

MR. HARTNETT: That is what I have always thought of, as an actual 45.

88 MR. O'DONNELL: This would not be a maximum 45. This would be a present 45.

MR. POPPITI: Yes.

MR. SCHMITTINGER: Except that we could write into this law that each census this would be reviewed by some formula, and maybe the 15 would be raised to 18——

MR. HARTNETT: Yes, I don't think you are going to be able to stick to 15 forever, because we might end up with a completely unwieldly Legislature.

MR. O'DONNELL: If 15,000 is the correct number to be represented, then you have to make other arrangements to accommodate that.

MR. HARTNETT: Where would you put them all?

MR. O'DONNELL: Well, that gets to be a housing problem.

MR. HARTNETT: I think you get into much more than just a housing problem when you get into a huge house.

MR. : 10 more?

MR. HARTNETT: No, I think 10 is fine. I don't see anything wrong with 45.

MR. : Well, all we are talking about is New Castle County, isn't it?

MR. : Well, Kent would get one more.

MR. SCHMITTINGER: They have 17. You haven't got your major fraction.

89 MR. JOHNSON: They are not voters, most of them. But you would be entitled to another one——

MR. SCHMITTINGER: Based on 22,500.

MR. : What you would have to do is set the 45, and then say that is the limit. I mean from there on, that's what the Federal Government did. They said 445, or whatever the number was. After that then you have got to re-carve the districts.

MR. : I wouldn't agree with that.

MR. : You wouldn't agree?

MR. : No.

MR. SCHMITTINGER: We'd go right back to where we are now.

MR. POPPITI: I think it would be better to expand it.

MR. O'DONNELL: I don't think 45 is such a large number. I don't think 55 is too large.

MR. POPPITI: Of course, my thinking is—of course, I am cautious and practical at the same time. My thinking is

in terms of what I think we can "sell." If we take this major step, if we change the thinking within the State, then perhaps this thing will be looked at, maybe in another 10 years, and maybe we will get closer to what is the ultimate to be desired.

90 MR. KAVANAUGH: I might be more liberal if I was sure you were going to recommend the constitutional convention, and then it would be reviewed at the constitutional convention.

MR. POPPITI: Yes, this, I think, is the ultimate to be desired, a constitutional convention.

MR. KAVANAUGH: Because I think there are a lot of causes for a constitutional convention.

MR. POPPITI: There are other areas of our government that have to be reexamined.

MR. O'DONNELL: I can assure you tonight or any other night will vote in favor of that, as I did at the last meeting. I indicated that, and I hope that tonight we will get around to that point, without regard to how far get with the progress we are now making. Because I think that would be a very substantial step forward, if this group would indicate its desire to have a constitutional convention.

Because, after all, it is 55 years old.

MR. POPPITI: Right.

MR. O'DONNELL: There are a lot of creaks and cracks in it.

MR. POPPITI: No question about that.

MR. O'DONNELL: I hope the meeting will not break up tonight without having a vote on that.

91 Now, getting back to this, I think that if a Representative is really to represent the people in his area, the number of people which he represents cannot be too large. And if it means enlarging the statehouse, that will have to be done just like we have had to enlarge the high schools to accommodate whatever number of people we have.

Now, to my mind the question is whether 15 is too much. Maybe 12 is the proper number.

MR. HARTNETT: I think 15 is the best we could for now. I think that selling them on 45 members would not be unreasonable, that the bounds wouldn't be too far off, and I think you could justify it. 12 is the absolute optimum, but 15,000 would not be too far off.

MR. O'DONNELL: No, it isn't. However, 15 is a considerable distance from 12 when you think how far 12 is from 1,600. It must be related to the smallest as well as to the total number, in my mind.

MR. HARTNETT: Well, I don't think that much difference between 1,600 and 15,000 and 1,600 and 12,000 would matter.

MR. KAVANAUGH: Well, one is maybe 6 times, and the other is——

MR. POPPITI: 7 times. That's the answer.

MR. KAVANAUGH: No, it is a little more than that.

92 And then when you talk about 15, here is Dover with 17, and you are not going to give it another Representative until it is 22,000. So it is really 16 and 22.

MR. : If you use 15.

MR. KAVANAUGH: Yes, if you use 15.

MR. O'DONNELL: If you use 12, you switch at 18.

MR. KAVANAUGH: Yes.

MR. SCHMITTINGER: Well, aren't we protected, Bill, by providing a formula for growth?

MR. KAVANAUGH: No, not as to the disparity between the smallest. You see, that is one of the things that worries me.

The Tennessee case highlighted the disparity between a big district and a small district. Now, the more we can reduce the disparity, the sounder ground we are on, in my view. Not only from a practical viewpoint, but from a legal viewpoint.

MR. POPPITI: Well, if you use 15 in an area that has got 16,000 people, before they get another representative they

have got to crowd themselves, whereas the area with 1,600, they could have a comfortable growth before they even attain the same status as the area that has a 15 or 16,000.

MR. : Yes, but it won't work that way.

MR. HARTNETT: If you are going to compare Black-
93 bird Hundred with Brandywine Hundred, you are never going to justify it on the basis of population. We are simply saying that Blackbird Hundred should have one because it is an historical unit, and each historical unit should have at least one. And I don't think you can say that 15 is an unreasonable number for a Representative to represent.

You are never going to justify a disparity between Brandywine Hundred and Blackbird Hundred on a population basis. You have got to justify it on the basis of an historical district.

MR. POPPITI: I was talking to a down-home legislator—a down-homer today legislator, and there is this to be considered: A man representing 1,600 in Blackbird Hundred has perhaps a harder time getting around his district than those of us who live in the urbanized areas of New Castle County where groups are a little closer, and it is a little easier to get around.

MR. KAVANAUGH: How many people are we talking about if we use 12 as the unit? Has anyone seen the figure on that?

MR. SCHMITTINGER: Well, we can figure that out.

MR. POPPITI: Let's see. On 20,000 we went up 6, and on 15 we went up 10, didn't we?

MR. : Yes.

MR. KAVANAUGH: You are going to do it with 12, then?

MR. SCHMITTINGER: Yes, all right.

94 MR. KAVANAUGH: And the major fraction would be 6,000?

MR. SCHMITTINGER: Yes. The 2nd District would be two additional.

MR. KAVANAUGH: Are you starting with New Castle?

MR. SCHMITTINGER: Yes. The 2nd District would be two new ones. The 3rd District one new one. 5th District would be two new ones. 6th District would be 4 new ones, 7th District would be 3 new ones, 8th District would be 1 new one, the 9th would be 1 new one, the 10th three new ones. That's all.

MR. POPPITI: Now, how many in the two lower Counties?

MR. KAVANAUGH: Kent would have——

MR. POPPITI: The 2nd District would have one.

MR. SCHMITTINGER: Yes, 2nd District 1.

MR. HARTNETT: That would have to be 18. Has it the 18 now?

MR. SCHMITTINGER: Yes.

MR. HARTNETT: That is the only one.

MR. POPPITI: How about Sussex County?

MR. JOHNSON: Sussex, no.

MR. POPPITI: No change. So it is still basically a New Castle change. What do you come up with?

MR. KAVANAUGH: 15.

MR. POPPITI: Ten, fifteen is what we come up with.

95 MR. : How are you going to sell that to the two lower Counties and not give them one person?

MR. : We will as soon as they cross the line.

MR. KAVANAUGH: We have given them two Senators.

MR. HARTNETT: I think we have a fighting chance to sell them on the basis of 15, forty-five in the General Assembly, with New Castle——

MR. POPPITI: Ten more. Giving us ten more.

MR. HARTNETT: 25. But when you get up to——

MR. POPPITI: You give us 10 more Representatives, and we give you 4 more Senators. We may as well talk practically. We are talking regions now.

MR. HARTNETT: Right.

MR. POPPITI: That will give you 4 more in the Senate——

MR. SCHMITTINGER: You people are just bursting with grief here, and we are now even close to——

MR. POPPITI: I know. We have an opportunity here to increase our representation——

(Unintelligible overlap of remarks.)

MR. SCHMITTINGER: The city boys are getting a principle accepted. That is what they are getting.

15,000 sounds right to me.

96 MR. HARTNETT: I think we would have a fighting chance of having that accepted by the members of the General Assembly, but I think if you go over that, we are on shaky ground.

MR. SCHMITTINGER: And when Dr. Dolan testifies, I am sure you are going to ask him how many offices he successfully ran for, aren't you, Frank?

MR. HARTNETT: If 12 is the optimum, 15,000 is not that far from 12.

MR. KAVANAUGH: Yes, but it is 22,000 when you are talking about 15, really. You are talking about 16 against 22.

MR. HARTNETT: Well, it's true, but we are giving them the major fraction. We could put it on the basis that you have to have another full 15 in order to have another Representative.

(The tape recording ended at this point in the meeting.)

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97 Sub-committee meeting held in the Treadway Inn, Dover, Delaware, on Tuesday evening, July 17, 1962, at 7:45 P.M.

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98 PROCEEDINGS

CHAIRMAN: Gentlemen, I guess we are ready to proceed. I was wondering, Mr. Schmittinger, if you have a text of those resolutions that were approved at the last meeting, which will give us a starting point from whence we can tee off tonight.

MR SCHMITTINGER: I don't think I can find them. I just received the record which Mr. Coote worked on over the

weekend to transcribe. But I think I can generally state what they were. Would that be satisfactory?

CHAIRMAN: That will be fair enough.

MR. SCHMITTINGER: I think the first resolution that was unanimously adopted was endorsing the principle of two houses. The second principle that was unanimously carried was that the Upper House, or Senate, be apportioned on a rational geographic basis. The third principle was that the geographic basis be the three counties, with seven Senators from each county, which was unanimously carried.

The fourth principle was on a motion by Mr. Poppiti that the present historic senatorial districts be preserved.

MR. O'DONNELL: That was with an exception.

MR. SCHMITTINGER: With the exception of New
99 Castle County.

The fifth principle was that the Lower House be apportioned on a general population basis as follows: the present 35 representative districts, as presently constituted, shall be entitled to a minimum of one representative. I'm sorry, that motion was never actually voted upon.

We started discussing the figure of 20,000, and 15,000, and we reserved decision on the actual number, the population quotient.

MR. WILSON: I think the whole thing was not approved.

MR. SCHMITTINGER: I just can't find it in the transcript.

CHAIRMAN: All right; suppose we start then on the assumption that as far as the House was concerned, we at least entered into preliminary discussion on the question of preserving the present historic representative districts, a preliminary discussion of whether each of those should have a minimum of one, and a preliminary discussion of the quotient which would reflect the right to increased representation on the part of the thickly populated representative districts.

Shall we tee off from there, or would you want to go back?

(At this point Senator Thomas L. Johnson made
100 his appearance.)

CHAIRMAN: Senator Johnson, we had just started and were reviewing what we had done at our last meeting.

Shall we go on with the House of Representatives?

MR. KAVANAUGH: If my memory serves me right, I think we did vote that the first order of business would be the Constitutional Convention.

CHAIRMAN: That's right. The Chair stands corrected. I will start the discussion tonight, as I did before, by having each one of us express our views generally with regard to whether we should or should not recommend a constitutional convention, and possibly, as an affiliate of that, our views on whether or not there should be some constitutional change which may expedite the holding of a constitutional convention short of three or three-and-a-half years.

I will call on Mr. Ernest Wilson first to express his general views on this important subject.

MR. ERNEST S. WILSON, SR.: I favor a constitutional convention and would suggest that we recommend the same to the parent committee.

As far as a speeding up device, I would welcome a constitutional convention sooner than it would normally take, but I am not sure in my own mind how we could do it,
101 not being a lawyer, other than the way I explained to you the other night, and, not being a lawyer, I am not sure that it is legal.

MR. JOHNSON: You've got a lawyer in the family.

MR. WILSON: Yes, but I can't consult him on this.

CHAIRMAN: Mr. Hartnett.

MR. HARTNETT: At the original meeting in the Governor's office, I was for a constitutional convention, and probably I surprised some people last week when I reversed that and spoke against it.

It is not something that I have not given a great deal of thought to. There is a certain amount of merit in hav-

ing a constitutional convention. I think it would be the way for Kent and Sussex counties to get zoning, which we have been unable to get so far out of the General Assembly. It will probably be the way for magistrate reform, which we haven't been able to get out of the General Assembly. I think a constitutional convention would probably strengthen the executive and weaken the legislative branch of our government.

But I think that a constitutional convention at the present time would jeopardize what we have done here so far. One of the reasons that I am not against a constitutional convention and for a constitutional amendment for re-apportionment, which could come about as early as January, is what I think was the remarkable progress that
102 we made at the first meeting. I did not conceive that we would get that far, and I think that we have already passed over the biggest hurdles on reapportionment. We have arrived tentatively at a composition for the Senate and a composition for the House. We haven't worked out the details but we have arrived at the broad plan, and though it may take a little time to work out the concrete details, I think the biggest stumbling blocks of the reapportionment have been passed.

Harold and I met with the members of the General Assembly from Kent County last night, and much to our surprise we found that they were on the whole inclined to view favorably the plan which we had tentatively arrived at at last week's meeting. There naturally were some that were not favorably impressed. There were a great many of them who came in with the idea that they were going to be against it, but after they heard about it, talked about it, and learned what the alternative would be, they seemed to be in favor of it.

They were in Kent County, I think, 100 per cent against a constitutional convention, and it wasn't due to my or Harold's mentioning it to them. As a matter of fact, we didn't mention the constitutional convention to them until

the end of the meeting. All we did was say that that was another alternative, and right away a couple of them jumped up and said, "We don't want that."

103 I think we are on the verge of getting this, what we have agreed on here, and I think if we can proceed very rapidly and draw up a concrete plan, with concrete language, that we have an excellent chance of having the General Assembly come in and pass the first leg of it, and coming back in January and finishing it.

Then I think maybe is the time to work on a constitutional convention, because by then the pressure for reapportionment, or the highly controversial issue of reapportionment, will be out of the way and they can concentrate on the other things which should be done if we are going to have an entirely new constitution.

I think if you go in there and say to them we recommend both, we are going to end up with a constitutional convention maybe, and I don't think we are going to get both. I think we are going to get one or the other. And if they did pass a call for a constitutional convention they would figure that would be just a way to pass the buck and forget about it. Then we would put the constitutional convention off until 1965.

I had serious question about whether we can shorten the time for a constitutional convention. I don't think the courts are going to let us wait until 1965 now. I must admit that my thought has changed a little bit on that. I think that if this plan that we have worked on were

104 to be passed in August, I think the court then would permit the General Assembly, at least until January or February, to finish the second leg of it, and I think then that that plan would have the strongest chance of standing up in court.

As I said last time, I am somewhat concerned about where downstate would be in a constitutional convention if the call for a constitutional convention is made now in the summer, in August, and it is an irrevocable act, and

in between now and the time the constitutional convention meets in 1965 the court orders reapportionment, or the court on its own initiative calls this reapportionment.

Of course, reapportionment means additional representatives for New Castle County, and I am quite concerned that this would, by implication, mean additional delegates to the constitutional convention for New Castle County. I think this is very unacceptable to Kent and Sussex counties, and I think that the Kent and Sussex County members of the General Assembly are just not going to buy it when they realize that this possibility exists.

I also think very strongly that it is the General Assembly which ought to do this because in the General Assembly today there are, you might say, four groups. There are the Democrats, the Republicans, the Upstaters and the Downstaters. No reapportionment constitutional amendment can pass the General Assembly without the
105 acquiescence of each of those four groups. The
1 Democrats can't do it alone; the Republicans have a veto. This, I think, will assure that the Republicans will have a fair shake in the reapportionment.

The downstaters can't pass it alone; they have to have the voters from upstate, and this assures that the plan must be acceptable and fair to upstate. And, of course, upstate can't pass it because they are in the minority, and the Republicans can't pass it because they are in the minority.

So each of these four major groups which I consider the four segments of the General Assembly has a veto over any reapportionment program, and this, I think, is going to cause a fair reapportionment plan, fair to everyone, fair to upstate, downstate, Republicans and Democrats.

In a constitutional convention the vote will be by a majority, and the majority party, whether it be Democrat or Republican, would control the constitutional convention and put through what type of reapportionment it de-

sired. If the Democrats controlled it, since the Democrats now control the General Assembly I think there is a possibility that the Democrats would control the convention, there is a danger that they would run roughshod over the rights of the Republicans and would reapportion in such a way as to be unfair to the Republicans.

106 Conversely, we don't know who will win the election of 1964. We know that there will be a gubernatorial election, and it could be a Republican or Democratic victory. I think that in that convention there is a great danger that the majority party would not give full consideration to the rights of the minority, especially if it were very one-sided. If there were a sweep in the state in 1964 and one political party overwhelmingly won the majority of delegates to the constitutional convention, then I think there would be a great danger that a reapportionment plan would come which would not be fair to the minority party.

As I say, now if this constitutional amendment is proposed in the General Assembly, all the four elements which comprise it will have their say and have the right to veto it if they think it is not fair.

I would like to point out that as I read the constitution very rapidly this afternoon, I can't find where it says there has to be a three-months' advertising in the paper for a constitutional convention. I may be wrong.

CHAIRMAN: No, that is an amendment.

MR. HARTNETT: That is definitely for amendment, and therefore the necessity of time is cricital now for a constitutional amendment. It must be done prior to August 6th, or 5th. They have to have time to have it advertised in the papers. It may be August 3rd.

107 MR. SCHMITTINGER: Three months before the election.

MR. O'DONNELL: You said for a convention?

MR. HARTNETT: For the constitutional amendment there has to be three months' notice. Therefore, I think we

should move as rapidly as we can to have the constitutional amendment enacted in time to be advertised so that the General Assembly will be in a position to pass upon a leg of it in January, and we should put off, since the question of a constitutional convention is not as crucial, since there is no deadline such as that three months' advertisement in the paper, we should put it off until we see if the General Assembly will pass this constitutional amendment.

If it should happen that the General Assembly would not pass the constitutional amendment, then we could try to do something on a constitutional convention.

I think that by recommending both you are going to lose one, and I'm afraid that the crucial thing to do is get this constitutional amendment through, because I think that is the one which is going to have the most appeal to the court rather than something which would take place in 1965. If we are going to have a constitutional convention, I think that the delegates to the constitutional convenion ought to be on a equal county basis, and that the constitution should be amended to provide that there
108 be an equal number of delegates from each county.

That's all I have to say.

CHAIRMAN: Senator Johnson.

MR. JOHNSON: I think that Mr. Hartnett has made a very eloquent speech opposing the constitutional amendment at this time. Personally, I have no objection to it, but inasmuch as this committee, I believe, was formed—the Governor's Committee was formed—largely because of the question of reapportionment at this time, it is very important that we get that question settled without confusing it with a constitutional convention.

We had our little meeting last night in Sussex County, and I don't know exactly what your impression was, Houston, but I got the impression that had we taken a vote the majority of the members of the legislature would have voted for a constitutional convention.

CHAIRMAN: Right.

MR. JOHNSON: But there were several there that indicated by facial expressions that they didn't favor it for some of the same reasons that Mr. Hartnett has stated.

We didn't put it to a vote and therefore we don't know, but my impression was that it would have carried. However, that would perhaps have caused some confusion in the Assembly when they go back, whereas there was absolutely no opposition to the reapportionment plan
109 as we had explained it to them, and they were almost 100 per cent in favor of asking the Governor to call a special session to act on this, although he is more or less obligated to do it regardless of what we recommend.

So that based on that, without going into the pros and cons of it, I would not suggest recommending a constitutional convention at this time but to go ahead with this reapportionment plan.

CHAIRMAN: Mr. O'Donnell.

MR. O'DONNELL: To the best of my knowledge, the constitutional provision with respect to advertising of many of the proposed constitutional amendments has not been followed. Does anyone know of a proposed amendment on reapportionment that has been advertised?

MR. HARTNETT: Not on reapportionment. That requires a two-thirds vote.

MR. O'DONNELL: That would mean that if the legislature should be called back now, you would just barely get it through.

I am not at all opposed to trying the legislative scheme. However, it seems to me to be wise to have two approaches. In the event the legislature should not adopt it, have the constitutional referendum on the ballot; and I believe that if the people in the state should clearly indicate that
110 they are ready for a constitutional convention as I think they are, it would be a good thing for the state of Delaware.

I have talked to quite a few members of the legislature, and I can't see the confusion which my colleague, Mr.

Hartnett, is concerned about. I think they clearly would understand the difference. At least if we should recommend to the committee both approaches, we would have two avenues open to us should the legislature buck on one or the other.

I would like to see us adopt a resolution recommending to the committee that two proposals be put to the General Assembly, one specific proposal on reapportionment and another proposal on a constitutional convention.

It seems to me that such an approach also might be more persuasive to the court in showing that Delaware is likely to get something done. Of course, that is only a matter of opinion.

So if the question is put, I would vote in favor of a dual approach to the problem.

CHAIRMAN: Mr. Kavanaugh.

MR. KAVANAUGH: I will be brief. I think I address myself generally to this overall question of what I would regard the purpose, function and scope of this subcommittee. Basically, it is the responsibility of this sub-committee to reach agreement on two separate pieces of legislation: one setting forth a plan of reapportionment of representation in the General Assembly of the state of Delaware; the second, a bill providing for a constitutional convention.

111

Like my colleague, Mr. O'Donnell, I favor advancing both fronts concurrently and simultaneously. I think it would be presumptuous of this sub-committee to leap over the parent group which sired this sub-committee and attempt to predict with any degree of certainty the legislative deliberations that will result in affirmatively passing legislation to accomplish these two ends.

I view the purpose again of this committee to be to report our recommendations on two specific pieces of legislation to the Governor's Committee of last June 28th, and this is to be done prior to or at least prior to the meeting of the parent group during the week of July 23rd which is upon us.

CHAIRMAN: Mr. Schmittinger.

MR. SCHMITTINGER: Mr. Chairman, I think when we all accepted appointment to this committee we did so with the implied pledge that we would come here not with our minds made up but would come here for a free and open discussion to try and arrive at what we thought was in the best interests of the state. I think that was implicit in our appointment, and I think when we accepted the appointment we agreed to this.

112 For that reason, I came here tonight not with my mind made up but prepared to listen to a discussion of what was in the best interests of the state. I am sure you all have the same concept.

I feel that we have got to keep in sight the purpose of this committee. As I understand it, this committee was formed as a reaction to a suit that was filed in the Federal court under the United States Constitution. That suit asked for reapportionment of the state. As I understand it, this committee was formed as—maybe I shouldn't say last hope, or last effort, but certainly very nearly—a last effort of the state of Delaware to come to grips with this problem of reapportionment.

The question of which method to follow in dealing with the question of reapportionment I think should be discussed in terms of reapportionment. Most of the arguments I have heard in favor of a constitutional convention are supported by reasons other than reapportionment of the state's population. I hear such arguments as: it will strengthen the executive; it will modernize our government, and so forth. These arguments lose sight of the purpose of our committee. Our committee is supposed to recommend a course of action to the parent committee which the Governor can support and which the legislature will enact, which will forestall the suit in the Federal courts.

113 The purpose of our committee is for the state of Delaware to somehow solve its own problem of

reapportionment rather than to have it solved by a three-judge Federal court. For this reason I think that the entire discussion of a constitutional convention should be in terms of the reapportionment problem.

I am perfectly anxious to listen to any argument in favor of a constitutional convention as that bears on the reapportionment problem, but if you gentlemen sit here and feel that this is the opportunity to modernize our government, this is the opportunity to strengthen the executive, then I think you are losing sight of what our specific purpose was, namely, to find some self-solution to this problem brought about by the Federal court suit.

Applying that to the instant question, I will say this, that we have reached agreement in principle on a constitutional amendment. If this amendment can be passed within the next week or two, as we all contemplate, it can then be made part of the constitution in January. We are talking about less than six months. Those advocates of reapportionment in Wilmington, and wherever they may be throughout the state—and there are many in the lower part of Delaware—would have the answer to their problem within six months. They would have their reapportionment. So it seems to me this is the quickest method
114 to pursue; this is the fastest method to pursue.

Also, it seems to me, if we introduce the constitutional amendment, we would be in a strong position to have the Federal court proceeding stayed. I think all the lawyers agreed to that last time, that we would be in a much stronger position than we are now.

If you pursue what has been referred to here as a dual approach, and also put in motion the mechanics of a constitutional convention, I don't think that will help our position before the court. I don't agree that they are two methods that can be followed at once. I think in a sense they are at cross purposes because what does a constitutional convention do? It does this. At the very moment when our amendment is being enacted into our constitution, or shortly thereafter, I should say, it wipes out the

constitution, it abolishes the constitution, and it says we will start all over and write a new constitution. So in that sense you are at cross purposes.

Secondly, there is no assurance that a constitutional convention, and I address myself now to the strong proponents of reapportionment, is going to more fairly reapportion the state. A constitutional convention is going to be composed of 24 lower Delawareans, I believe, and 17 New Castle Countians, some of them coming from rural areas. It could well be that they will come out with less than what we have now, or the same sort of thing that we have now, just juggled around a little bit.

So in the interests of those who favor reapportionment, if they sincerely believe in the principle which we have discussed here at our first meeting and which was, I believe, almost unanimously accepted, then they can best serve their interests by supporting the amendment approach and by not confusing the issue with the question of a constitutional convention.

The other point I want to mention in this regard is that many of the legislators recognize, I believe, as we here recognize, that this is a very difficult problem, and if we give them the alternative of throwing it open to a constitutional convention, that may well be what they will do. Why not ask them to come to grips with the problem as we have come to grips with it? If we are all satisfied with it I think we can convince our legislators.

So I would be against the dual approach, I believe, although my mind is not definitely made up, as I said earlier.

I will say finally that I think the strongest approach will probably be for us to recommend to the Governor's committee the following, that there be introduced into the General Assembly the constitutional amendment along the lines which we have discussed, and that if it is defeated then there be introduced a bill calling for a constitutional convention.

My reasoning there is simply this, that is, to help the state of Delaware solve its problem and not have a Federal court judge solve it. If we have the constitutional amendment, I believe Mr. O'Donnell and his brethren at the bar who are defending this case will be in a strong position at least to get a stay and allow the thing to go through next January.

If we don't get that amendment, if it is defeated, then the next thing we can give him, which in my opinion is the weakest thing, would be the call for the constitutional convention.

So I would suggest that we recommend the amendment, and if it fails that we recommend a call for a constitutional convention, keeping in mind that our purpose is to find a way out of this suit, and also keeping in mind that the discussion of a constitutional convention should be in terms of reapportionment and not any other benefits that people may think may be derived from a constitutional convention.

CHAIRMAN: I feel that Mr. Schmittinger's last proposal is subject to some comment, that the constitutional convention call be the alternative in the event a legislative-enacted reapportionment plan is defeated, and that
117 it would necessarily cause the legislators to consider passing the buck knowing that this alternative would come before them.

I don't want to see the legislators pass the buck. I personally feel, as far as our state is concerned, that three segments of our society are involved, or shall I say three arms of our government are involved. First, the judiciary is involved, and its duty and responsibility to see that the General Assembly of the State of Delaware is so constituted as to meet the standards and requirements laid down by the 14th Amendment of the Federal Constitution. This is their duty, this is their responsibility.

I conceive that in view of the urgency of the situation the first responsibility is to come up with a plan and to

formulate a plan which we hope will meet the test laid down by the 14th Amendment of the Federal Constitution. That duty naturally devolves and falls upon the General Assembly, and in one sense of the word we are acting as a proposing arm to that General Assembly.

But I feel rather deeply about this, that the entire citizenry of the state of Delaware is deeply involved in what will amount to a radical change from the historic in the legislative arm of their government, and certain it is that the legislative arm of the people's government in a republican form of government such as this should speak most clearly the will of the people.

118 This issue was not squarely before the people at the last general election, so in a very real sense of the word the legislature will be fumbling because, number one, the courts have not laid down any definite guidelines, and because this issue was never placed squarely before the people.

I feel deeply that we should not, and the legislature should not, deny to the citizenry of Delaware the privilege to exercise their power through their chosen delegates to a constitutional convention to review what this legislature and what the subsequent legislature may do with this particular problem.

In a very real sense of the word, we are grasping for a hurried solution. I would like to see a deliberate solution by a deliberative body. I think it is an important problem. I say deliberate in this sense, that when a constitutional convention is convened, I feel reasonably sure that the judicial process will by then have ground out some definite guidelines as to what should be the makeup of a representative General Assembly in a state such as ours. So they will in that sense of the word have more light than we have, or which our legislature now has.

In addition to that, a General Assembly, in my opinion, is primarily a political body. It is representative of political parties. It is made up of those people who

have aspired to political office, and presumably aspire to return to political office, at least in large measure. The delegates to a constitutional convention are there for one purpose, and that is to review the fundamental structure and makeup of their own government, and then they go home and they are no longer responsible to the citizenry who elected them, for purposes of re-election.

I think that a constitutional convention can operate in a much more deliberative manner from both of these points of view. I think the history of constitutional conventions has been that the caliber and quality of the thought processes are, by and large, superior to those of a "come today, go today" General Assembly.

So it is that I feel very deeply that the people of Delaware should be afforded an opportunity to speak to this issue and to speak squarely to the issue after their legislature has acted.

I think that as far as the members of the General Assembly are concerned, they should, and I feel that if properly approached they would, welcome a constitutional convention to review their handiwork, even though it may pass muster with the court.

I feel also that if the General Assembly should adopt a plan of reapportionment which we propose, or as they may modify it, if it should fall short of the mark established by such opinions of the courts throughout the United States, and in particular the Supreme Court, then this would afford the people through the delegates to the constitutional convention a second and a clearer shot at it, and I think that our courts would see that we are acting in the utmost of good faith in saying to the courts, "We propose and strongly recommend that in this moment of haste these corrections now be made by the General Assembly through a constitutional amendment in our legislative branch of government, and also we strongly recommend that the people of this state be af-

forded a chance to review what their General Assembly has done and to look at this problem as well as other problems which confront this state, constitution-wise, in a more deliberative atmosphere and with greater light upon the problems which confront us."

I think that perhaps Delaware has waited too long to face up to these problems. We are now squarely confronted with them, and from my sitting in with the representatives from Sussex County, and with Senator Johnson last night, I think I can say this. We didn't ask them to take a vote, to bind themselves, sitting in the Georgetown courthouse, as to what they would do. We explained fully and in great detail what we had done. We explained the fears which the member from Kent County had evinced at our last meeting with regard to what may happen
121 to Kent and Sussex County in a constitutional convention. We tried our best to leave nothing out.

MR. JOHNSON: That's correct.

CHAIRMAN: We were open to questions. We said we didn't want them to commit themselves because we felt that they should commit themselves only when they met together, but we wanted to get their feeling as to whether or not at least we were closely in tune with their thinking or if we were way out in left field.

The end result was that they gave us a unanimous vote of confidence, which is as far as we could expect them to go.

I do feel that if this is presented to at least the representatives from Sussex County and the representatives throughout the state, in this light, that they will face up squarely to these problems. I know that in Sussex County we are prone to be somewhat laissez-faire. If we are happy with the present situation we are prone not to change it. But I will say this for Sussex County: When it realizes that a problem must be solved, my experience has been that they come up with the right answer and solve it in a correct way.

I want to say this, that I feel that a constitutional convention, if it could be so held under an amendment as to divorce it from a political campaign, by holding
122 the election for the delegates the constitutional convention at a special election, separate and apart from a general election, this would have a tendency in my opinion to divorce it further from politics and place it upon a more statesmanlike level.

Finally, I feel that we should propose a constitutional convention because this was one of the purposes for which this committee was formed. I don't think that it ought to be in the alternative. I think it should be with the light that the legislature is required, under the urgency of the situation, to do something now, but at the same time the legislature should recognize that they have no clear mandate from the people of Delaware as to how this problem should be solved, and they should afford the people of Delaware the opportunity to review.

In talking to other gentlemen throughout the state, particularly in New Castle County and in Sussex County, there seems to be a momentum that is slowly gathering, and I will predict that it will snowball, that the people do want a constitutional convention and they want it now. And this present situation only highlights the need that this state has had for a constitutional convention for a considerable number of years last past, we not having reviewed our fundamental law for 65 years.

I will be glad to have any member of the com-
123 mittee get into a deep argument and discussion on this problem before I call for a vote.

MR. SCHMITTINGER: Mr. Wilson, how do you view that a constitutional convention will give us a better and quicker solution to the reapportionment problem?

CHAIRMAN: I don't say that it would give a quicker one, but I say that any work that I do here today in haste, any work which the legislature may do tomorrow, necessarily in haste, would so fundamentally affect the form and struc-

ture of the government that the people of the state of Delaware should and ought of right to be given the opportunity to make that review through the delegates whom they select for that purpose and for no other purpose, and not through a representative who may possibly have gotten me a road resurfaced in my district, or some other totally unaffiliated political issues that go into a political campaign.

MR. SCHMITTINGER: Aren't we faced with a Federal court that is about to reapportion the state?

CHAIRMAN: Yes, but I am telling the Federal court that I am requiring of my legislature that they take immediate action. I am asking the Federal court to recognize that immediate action ofttimes is action in haste, but at the same time I am asking the people of the state to review this thing as soon and as fast as they can review it
124 through their chosen representatives whose sole responsibility will be to review it.

And I say that I feel that I could stand up before the Federal court, I could hold my head high, and I could say to those distinguished members of our bench that if the General Assembly does these things and if the people of Delaware call for a constitutional convention, gentlemen, you should give us, and give the people, a fair opportunity to put our own house in order, because here is evidence of good faith that we are about business as rapidly as we can go about it.

MR. SCHMITTINGER: Can I make two comemnts about that? Do you concede that the constitutional method is an indirect method of meeting the reapportionment problem?

CHAIRMAN: Will you say that again?

MR. SCHMITTINGER: Isn't the constitutional convention method of meeting the reapportionment problem an indirect method?

CHAIRMAN: No. I would say it is a direct method by the people, through their chosen representatives, to do that and to do nothing more.

MR. SCHMITTINGER: Aren't the legislators in fact saying, "We are not going to directly solve this problem by an amendment. What we are going to do is provide for the election of delegates to a convention and let them
125 decide it?"

CHAIRMAN: No. I am asking the legislature to wrestle with this problem in all haste, and to formulate and enact a constitutional amendment by the legislature which will meet the test of the 14th Amendment. But at the same time I am asking the legislature to say—and I think they should, as every legislator acting in good faith should—"This is such a fundamental change from the historic past that I feel that the people, as a body politic, have a right to have their say directly upon the problem, and the most direct say that the people can have upon this problem is through their chosen representatives in a constitutional convention."

MR. SCHMITTINGER: One thing that we encountered last night in Kent County was this. We had every member of the legislature there, and this is what we encountered. They said, if we vote for this next week we are going to have to run on that issue in this coming election. That was paramount in their minds.

So in effect, if the amendment is passed, every legislator running for office will have to run on that issue, will have to stand up and be counted. He will have to say, "Yes, I am going to vote for that amendment and make it law the first week in January," or, "No, I am not." And in this sense the people of the state of Delaware will
126 ratify what the legislators can do, next week.

CHAIRMAN: Let me say in response to that, once the legislative hand is committed by the first leg of a constitutional amendment, if you stop there you have frozen that plan as being the only plan that the people can consider. And I say that any plan that we come up with necessarily cannot under the circumstances be a judgment of Solomon. I say you can come closer to a judgment of

Solomon by having representatives to a constitutional convention elected by the people, where the people would know that those representatives could consider many different apportionment plans, and even consider the matter of redistricting.

I myself do not feel that this committee, in the time allotted to it, or I personally, even with the benefit and advantage of the knowledge and discussion of you gentlemen, would want to undertake the problem of redistricting this state from the historic past. But if the people delegate that broad power to the representatives that they send to a constitutional convention, then those people would have the power to consider what we have done, what the legislature has done, to consider other methods, other plans, on a far longer range.

MR. SCHMITTINGER: You assume again, Mr. Wilson, that the Feedral court is going to wait for all that to happen?

127 CHAIRMAN: I am saying that this will be stronger evidence of good faith on the part of Delaware; that when these attorneys go before the Federal court it can be shown that Delaware is on the move to put its house in order.

MR. SCHMITTINGER: Aren't there some constitutions that don't provide for reapportionment at all?

CHAIRMAN: Delaware, I think, is the only one.

MR. SCHMITTINGER: Aren't there some provisions that have been held unconstitutional?

CHAIRMAN: You mean automatic?

MR. SCHMITTINGER: Yes.

CHAIRMAN: No. As I recall, those cases where there was an inbuilt plan of reapportionment in the constitution, the attack was on the General Assembly for not following those cases.

MR. SCHMITTINGER: There are some states that don't provide for reapportionment.

CHAIRMAN: Delaware, I think, is about the only one.

MR. SCHMITTINGER: Mr. Wilson, what assurance will a three-judge Federal court have that a constitutional convention in 1965 will provide reapportionment?

CHAIRMAN: They can only be assured that we are moving forward in good faith. That is the only assurance I can give them. And that we are moving forward by having the legislature speak to this and by having the people, through their chosen representatives, speak to it.

128

MR. SCHMITTINGER: The constitutional convention method is the most indirect and the slowest method of obtaining the writing of a new constitution.

CHAIRMAN: I am saying both.

MR. SCHMITTINGER: When you say both, aren't you in effect saying that next January our legislators will enact the second half of this amendment, which will provide for reapportionment, and about the same time they are going to provide for the election of delegates to the convention which will wipe out the very constitution which they amended?

CHAIRMAN: No.

MR. SCHMITTINGER: Well, that is what it will do, won't it?

MR. HARTNETT: I think you are missing the point. If the General Assembly agrees to call a constitutional convention, then why in the world would they pass a constitutional amendment for reapportionment since the constitutional convention is going to do it for them. This is the easy way for them to get out of it. This is the way they don't have to go home and say, "I voted for reapportionment; I gave those dirty so-and-so's from New Castle County ten more representatives."

It's going to be so easy for them to say, "Let the constitutional convention do it," and if the constitutional convention is going to do it in 1965 why in the world would they vote for a constitutional amendment now? There is no need for it.

129

CHAIRMAN: Very simply. I will restate it.

The legislature will necessarily be told, as we all know they are, that they are directly under the hammer to do something now.

MR. HARTNETT: Now, not in 1965.

CHAIRMAN: Right now. So this has to do with the legislature having to, as of now, adopt what it must adopt in all haste, a plan which will meet the test of the 14th Amendment of the Constitution of the United States, for the reason that under the present provisions for constitutional conventions, we can't wait that long because there is grave fear that the court will act.

MR. HARTNETT: Just a few minutes ago you said that a constitutional convention would be enough to hold off the court.

CHAIRMAN: I never said anything like that.

MR. HARTNETT: I'm sorry.

CHAIRMAN: I said that we should propose both because there are three bodies politic involved: the court, which interprets the Constitution, the legislature, which is under the hammer, and the people. They must be heard.

130 MR. SCHMITTINGER: How is the court involved in this, Mr. Wilson?

CHAIRMAN: The court must determine whether or not the present constitutional provision of reapportionment, or any provision of reapportionment which is enacted by the General Assembly——

MR. SCHMITTINGER: You mean the Federal court?

CHAIRMAN: Exactly.

MR. SCHMITTINGER: Well, that is not going to be affected by the constitutional convention, the Federal court.

CHAIRMAN: Let me complete my answer to Mr. Hartnett's question. Going back, the legislature must necessarily be told that they must come up with a plan which will meet the test of the 14th Amendment, as declared by the Federal courts.

Number 2, I think the legislature should be told, and I feel that they will agree, that there is a third and now

silent party in interest in this structural change of our government, and that is the people of the state of Delaware, and they should not deny to the people of the state of Delaware their right to review that which the legislature has done, and to review it in cold isolation, and not have it reviewed by representatives who are chosen in the heat of political campaign, where many diverse interests
131 may affect their election. And I think that the legislature would welcome the opportunity of having the people, through chosen representatives in a constitutional convention, being delegates who will not again be up for reelection and will not be involved in the pit of a political campaign, review and say on behalf of the people what they think of the plan which has been adopted.

I think that this judgment must be passed on the plan by two arms of our government: the Federal courts and the people of this state, and I know of no better way for the people of this state to pass upon it than by a constitutional convention.

MR. SCHMITTINGER: I am certainly not here to advise the people from New Castle County, but it seems to me that their interests would dictate to them that they should be opposed to a dual proposition, because if two bills go in, number one, there is a very good likelihood that the legislators will defeat the amendment and just pass the buck to this constitutional convention, as Mr. Hartnett said, in which case the people, assuming the court will agree, will have to wait until 1965. For what? To get a meeting of 41 people, 24 of whom are Lower Delawareans, 17 of whom are from New Castle County, many of them rural.

It seems to me that the people from the upper part of the state who want reapportionment——
132 CHAIRMAN: I have never said that I assumed the Federal court will wait for a constitutional convention in 1965. I do not believe that the Federal court will wait for a constitutional convention in 1965. I have said that insofar as the Federal court is concerned, num-

ber one, the legislature must act now on a constitutional amendment for reapportionment, and this we should recommend.

Number two, I think that we should recommend that the people of this state have an opportunity to review it by a constitutional convention as soon as it can be called under the existing provisions of the constitution, or as it may be amended to expedite and speed it up.

These two strong recommendations, I think, ought to be sufficient, at least in my humble opinion, to commend themselves to the court as an evidence that Delaware is busily getting its house in order.

MR. SCHMITTINGER: Mr. Wilson, do I understand that you don't believe the Federal court would wait for a constitutional convention in 1965?

CHAIRMAN: I do. I feel very strongly that the Federal court will not wait until 1965 to get reapportionment done in Delaware.

MR. SCHMITTINGER: Doesn't that mean that the Federal court is going to decide the reapportionment issue, then?

133 CHAIRMAN: Unless in the interim the General Assembly comes up with a plan which meets the test of the 14th Amendment, and the court so says it has.

MR. SCHMITTINGER: If that is so, there is no point in having the convention.

CHAIRMAN: Oh, yes. I think the people ought to have an opportunity to say something about this.

MR. SCHMITTINGER: Won't the people have an opportunity when they elect the members of the legislature this fall?

CHAIRMAN: Not as precisely as they would when they elect delegates to the constitutional convention, because there are many facets to a political campaign.

MR. SCHMITTINGER: How can that be when the people who elect delegates don't even know what plan of reapportionment the delegates will enact? How can that be?

CHAIRMAN: I would certainly say that under a representative form of government, when you have elected a representative and given him power to reconstruct the fundamental form of your government, that that representative speaks fairly for you upon all questions of reorganization of your government, including reapportionment.

MR. SCHMITTINGER: Isn't that true of our representatives right now, who have the power to amend the constitution?

134 CHAIRMAN: Not with such clarity as it would where they are elected solely for that purpose and for no other. A member of the General Assembly is elected for many reasons, not for the sole reason of re-organizing the fundamental charter of our government.

MR. SCHMITTINGER: What would compel a delegate to a convention to enact a reapportionment plan?

MR. O'DONNELL: The Federal courts.

MR. SCHMITTINGER: Well, we've got that situation right now, and our legislators have the power right now.

MR. O'DONNELL: May I answer Mr. Schmittinger?

CHAIRMAN: Yes.

MR. O'DONNELL: I can only speak for those pepole in New Castle County that I have talked to, and for myself. All of the people who have been studying this problem are convinced that we are going to have reapportionment one way or another. So that it isn't a question of whether we in New Castle County are going to get more representation; it is how we are going to get it. We are convinced in our own mind that we are going to get it.

Now, we also believe that it is more in accordance with our form of government to have elected representatives of the people draft the constitutional amendment—I am using that in its broad sense, whether it be by con-

135 vention or by a regular amendment—than to have three men, or a Master appointed by the United States courts, to draft it.

We are convinced that we are going to get more representation. The United States Supreme Court has just about

said so, even though Delaware was not a party to the suit. We are convinced that we are going to do it, but we are also convinced that under our democratic form of government, the amendment—the division of our country in particular—should be done by some of us, some of our people, rather than by three Federal judges.

We are not at all worried about whether we are going to get this, but we want—some of us do, at least—our elected representatives to have some say in how it comes about.

Now, if we were taking a very narrow approach to this, we wouldn't be here tonight because should the election be at large I am convinced that all the members of the Senate, and all the members of the House, would be from northern New Castle County. Whether they would be Republicans or Democrats I do not know, but I am sure of where the total strength of the registered voters is.

But I don't think that is just, I don't think it is democratic, and I don't think it is fair. Consequently, I think that a strong case can be made to the Federal courts
136 that since it isn't just and it isn't fair to have all the representatives elected by the voters in northern New Castle County, that they should wait for the people, or the elected representatives of the people, to come up with a new scheme.

Consequently, I think that the people of New Castle County that I have spoken to are not worried about getting more representation at all. We are worried about having the court enter an order that would not be fair to the people of the state of Delaware, and which would be completely out of sympathy with our traditional method of enacting laws. We think that this is a matter for legislative enactment—again I am using that word broadly, whether it be in a constitutional convention or in the legislature—and not a matter for judicial order.

Consequently, we are in favor of doing everything possible to see that this amendment be adopted one way or

the other, and we believe that we should take, and this committee should recommend that both proposals be recommended to the overall committee, and that that committee should adopt the resolution recommending that two bills be introduced in the General Assembly, one for a constitutional convention and the other for redistricting, for an amendment to redistrict.

MR. SCHMITTINGER: I agree with everything you
137 say. I would like you to answer me this question;

Mr. O'Donnell. How can you meet the argument in the Federal court of the plaintiffs' attorney that by virtue of enacting the first leg of the amendment, and by virtue of starting the constitutional convention process into motion, that in effect what the legislature has done is to give an amendment which provides, we'll say, a reasonable reapportionment that is going to be taken away the very year after it is created, taken away in favor of who knows what. Who knows what the constitutional convention will do?

How do you meet that argument? How do you meet the argument that this isn't really a delaying tactic?

MR. O'DONNELL: I'll take those up in reverse order, if I may. I think the Federal court will have to assume the good faith of the people of the state of Delaware and their elected representatives. If we are not acting in good faith we are utter fools, because we are literally staring down the barrel of a Federal order, and if we do not act in good faith then our fate will be similar to that of the Wisconsin plan. There the governor vetoed it, and the court immediately appointed a master to draft a plan.

I think our people can understand this, and I think that our people do, and everyone I have spoken to really is approaching this thing in good faith in both parties. I think
it has been demonstrated by the members of this
138 commitee; I think it has been demonstrated by the members of the General Assembly who met with the Governor at the overall meeting.

I really haven't run into anyone whose good faith I question. Perhaps I am naive. But I believe that if some-

thing is done, that the court will have to believe, and will believe—after all, they are three Delawareans who have had experience with our processes before—that we are acting in good faith.

If I were a member of the court and our Assembly had adopted one leg, and our people had ordered a constitutional convention by referendum, I would believe they meant business. I really don't think that the court will believe that the people of the state of Delaware are toying with them.

MR. SCHMITTINGER: I perhaps didn't make myself clear. I am not talking about the members of the legislature not acting in good faith. I am talking about a situation where in 1965 the constitutional amendment which presumably our legislature will enact in January is wiped out, and 41 men are brought together to try to decide what is best.

MR. O'DONNELL: I think I see what you are driving at. If we should adopt a second leg in January of 1963, and then have a constitutional convention thereafter, you are worried about the possibility that the constitutional
139 convention might resort to a non-rational plan of representation in the General Assembly.

I would answer that by saying that the history of our conventions in the state of Delaware is that we have attracted, I think—of course, I wasn't around; I only know what I have read—outstanding men of the time, and that our constitutional convention today will adopt men who will be more conversant with this apportionment matter than we are, and they would certainly not be so foolish as to resort to a scheme that would be knocked down as fast as it is adopted.

We have to assume that they will know everything we know and a lot more, and in my mind, that they could not be so foolish as to adopt a scheme that would be unconstitutional, as we now know the United States Supreme Court has held schemes similar to ours to be.

Consequently, I think we just have to accept on good faith that any constitutional convention that might be

called would not take a step backward. I would hope that it would take long steps forward. And I think that the court will assume that it will be moving forward and not backward. You have to remember that they too will have a cannon aimed right at them if they should adopt a legislative scheme which was unconstitutional.

MR. ERNEST WILSON: I think that there is a far
140 greater chance of a constitutional convention coming up with the right answer than of our legislature coming up with it with a gun pointed right at them, in a very short period of time.

MR. HARTNETT: Last night most of the members of the General Assembly said they were the ones who would be running for members of the constitutional convention.

MR. KAVANAUGH: I think it makes sense. If you are going to pitch hay, I want two prongs in my fork.

MR. HARTNETT: I want to say one again: If you have two prongs, you are weakening both prongs. I think that is the danger. If you go down there with two plans, one a constitutional amendment, the other a constitutional convention, you are going to find some for the constitutional convention, some for the constitutional amendment, some for nothing, and you are weakening your chance to get anything. That's what really scares me most of all.

I would rather see us go down there, asking for the constitutional amendment. If it should happen that we not get it, then come back, because we have a little more time on the constitutional convention. It can be any time before election because there is not that three-month deadline. Then come back and say, "We couldn't get the constitutional amendment through, we will have to settle for the constitutional convention."

141 But I think that if we give them two alternatives we may well come up with nothing, which would be a tragedy.

MR. KAVANAUGH: First of all, I don't view it as an alternative in the sense of being "either or". I view it as a simultaneous and concurrent type of thing.

MR. HARTNETT: You do, but the members of the General Assembly are scared to death, as they stated last night, that if they vote for reapportionment of any kind that it is going to hurt them at the polls, because their opponents are going to say you should never have done that. And the easiest thing for them, as far as the November election is concerned, is to pass the buck to a constitutional convention.

MR. KAVANAUGH: I just want to make one comment. Our charge here is not to tell the legislature what we in our humble wisdom in two meetings have decided, but rather to refer to the parent group convened by the Governor, consisting of 32 representatives from the two major political parties, what in our considered judgment we believe to be a practical approach, a statesmanlike approach to this impending court decision, and a foreseeable long-range plan with respect to the future government of the state of Delaware.

MR. HARTNETT: At that original meeting we were
142 asked to bring back a plan. We were not given any mandate. We were not told we had to bring back a plan for a constitutional convention. We were asked to study the problem, bring back our recommendations as the best and most practical plan.

It was definitely stated by several people that we were to attempt to bring back a plan which we felt could be enacted.

MR. JOHNSON: This is something Mr. Roth had to say about it, and I am getting somewhat confused, and maybe a constitutional convention is the better way:

"It is the responsibility of this subcommittee to attempt to reach agreement on two separate pieces of legislation:

"1. A bill setting forth a plan for reapportionment of representation in the General Assembly of the state of Delaware." That is one job.

"2. A bill providing for a constitutional convention."

MR. HARTNETT: Well, there is a bill already.

MR. JOHNSON: (Reading) "It is my understanding that this sub-committee may select bills already introduced in the General Assembly, or may prepare new bills."

Since I have been hearing these arguments I am wondering if the constitutional convention didn't apply
143 solely to a reapportionment issue and not to anything else.

MR. SCHMITTINGER: But you can't call it that way.

MR. O'CONNELL: You can't limit it. It was certainly the motivating factor.

MR. JOHNSON: I am wondering if there isn't some feeling with some of the Governor's committee that here is a good chance to get a constitutional convention in Delaware, which is all right with me. I have no objection to it, but there are some very definite objections.

MR. HARTNETT: Some people want a constitutional convention regardless.

MR. JOHNSON: Which is the most important? My understanding of this is that we are to recommend a plan of reapportionment. First a bill and then, if that fails, the constitutional convention will certainly provide a plan.

MR. SCHMITTINGER: I would agree to that.

MR. HARTNETT: I have no objection to that. I say if the constitutional amendment fails, then certainly we've got to go to a constitutional convention because we've got to do something. As Frank said, we can't let the court do it.

MR. JOHNSON: I would like to know if the Governor's committee is interested in the constitutional convention besides the issue of reapportionment. What is your
144 thought about that, Mr. Chairman?

MR. HARTNETT: Frank and I were there; and this question of which, or either, was discussed quite at length. Of course, that committee that night could have gone on record as being in favor of a constitutional convention if it desired. My understanding was that the whole thing was thrown into our lap and we are to come back with a recommendation.

They have a right to reject our recommendation. We could recommend a constitutional convention and they could say they recommend against it, or vice versa.

MR. JOHNSON: This would be an easy way out. As it is stated here, we could recommend that a constitutional convention be held. That is an easy way out, but is that what they want?

MR. O'DONNELL: Mr. Chairman, may I ask Maurice a question?

If upon the recommendation of this group our parent group should recommend to the legislature that they attempt to enact the first leg of a constitutional amendment, and nothing is said about a constitutional convention, the members of the present General Assembly who wish to run for re-election will have the same question asked by their constituents as you have proposed if both questions are put forward.

145 It seems to me that certainly they may have to defend their vote, which I don't object to; I think they should be glad to do it. But in any case they will have to defend their vote. So the fact that they will have to defend their vote, and the fact that there is also a constitutional referendum question before them, seems to me not to change the picture one iota.

If they vote No on a constitutional amendment, it seems to me they are going to have to defend that vote and their opponent can certainly say, "This man, in my mind, showed very short vision; he didn't see the Supreme Court behind him." Whereas if they vote Yes, they can say, "Gentlemen, we believed that it was expedient for us to do so. We believe that it is more in line with our form of government for us to have done so than to have the court do it."

I would think that either way they are going to have to face up to the issue.

As I understand it, you are recommending that the constitutional convention issue not be submited but the two-legged amendment be submitted. So, if I follow you

through, then the present legislators are going to be put to that acid test which you seem to fear.

MR. HARTNETT: You misunderstand what I am saying.

I don't have any objection to the legislators going
146 out and defending their voting for this constitutional amendment, and I think they can, and they can defend it very well. What I am saying is that there are those among them who are fearful of defending their vote for the constitutional convention, and the easy way out for them is to merely vote for a constitutional convention and then they don't have to defend it.

I think they ought to defend it, I agree with you. But I think we perhaps are paving the way with temptations, and we are making it a little too easy for those who want the easy way out.

MR. O'DONNELL: You sharpened it up for me considerably now. Is it your opinion that if they have two proposals before them, they will vote Nay on the legislative amendment?

MR. HARTNETT: Yes.

MR. O'DONNELL: Whereas if they have just one they will vote Yes on it?

MR. HARTNETT: Precisely.

MR. KAVANAUGH: I think that is a non sequitur.

MR. HARTNETT: Don't you see, the easiest thing for the legislator to do—this is what they said to us last night. They said, "Where is the court order? We haven't been ordered to do anything. How are they going to enforce it?

How are they going to make us do it even if there
147 is a court order?"

They wanted to impeach the United States Supreme Court. They wanted to abolish the United States Supreme Court.

MR. JOHNSON: Some of our boys wanted to join with Maryland.

MR. HARTNETT: Right. The easiest way for them to pass the buck and not have to come out and stand up and be

counted and vote for reapportionment is to pass the constitutional amendment. I don't think we ought to do it because I don't think we ought to wait for 1965. I think if this reapportionment amendment is fair it ought to pass, and they ought to stand up and defend it.

MR. O'DONNELL: It is your opinion that if the legislative amendment alone is presented, that it will get the required two-thirds vote?

MR. HARTNETT: Yes.

MR. SCHMITTINGER: I think so. It will get the Lower Delaware support.

MR. HARTNETT: As I said, there are only two in Kent County who definitely said they would not vote for it. None of them would vote for a constitutional convention.

MR. SCHMITTINGER: Whether a constitutional convention will add to or detract from the constitutional amendment being passed, isn't that really an issue?

148 MR. KAVANAUGH: Suppose the two of them are put in? As I understand what you said previously, they will vote Nay on the amendment and Yea on a convention?

MR. HARTNETT: I think that is what they will do. They might vote Nay on both, then they will split. Once you give them two alternatives then you give, we'll say half of them, a chance to take the other alternative, and we need every vote we can get.

MR. O'DONNELL: You say that the reason they won't vote for reapportionment when they have a possibility of a constitutional amendment is because they are going to have to defend their vote at home. But if they do it alone, without the constitutional convention being there, they are going to have to defend it anyway. So I can't see why they would vote any differently.

MR. HARTNETT: We are saying here is the constitutional amendment, we've got to do it, let's do it—and they will do it. But when you give them two alternatives some of them are going to take one of the alternatives.

MR. O'DONNELL: If you are right in your conclusion, and you certainly might be, I really can't argue what would happen, but if you are right there are many men in that legislature who are quite capable of drafting the bill for the constitutional convention. If that is what they want to do, it matters not what we do because
149 if that is what they want to do they will have the bill there and they will do it.

MR. SCHMITTINGER: Which bill?

MR. O'DONNELL: The constitutional convention bill there, and they will adopt it. If that is what they want to vote Yes on, that is what they will do.

MR. HARTNETT: But I would hope that the prestige, and the unanimous action by this committee, and perhaps unanimous action by the Governor's committee, would have enough prestige to keep a sufficient number of them in line to vote for the constitutional amendment.

But if we recommend both, then it is difficult to say to one who is going to vote for one and not the other, you are not going along with what we have done. If a man doesn't go along with what we recommend, then I think you can say to him, this is a committee of eight Democrats and Republicans, it is ratified by the Committee of Sixteen who are the leaders of the party, and I think you can bring a prestige factor to it.

CHAIRMAN: Let me speak to this. There is something in what you have said, Mr. Hartnett, that I don't quite comprehend. You have said that the Kent County representatives have expressed a grave fear of a constitutional convention, per se, for the reason that they are fearful that the downstate margin is not sufficient to keep
150 the upstate representation from getting the bit in their teeth at a constitutional convention and running way with it.

MR. HARTNETT: That is only of their fears.

CHAIRMAN: Second, you have said that your delegation last night from the General Assembly made it very clear

to you that they would not vote for a constitutional convention. But yet here you are arguing that if they were given alternatives they would discard the two-legged amendment to the constitution and vote for a constitutional convention.

MR. HARTNETT: Maybe I made it too strong. I don't say they would vote for the constitutional amendment.

CHAIRMAN: It seems to me you are attempting to carry water on both shoulders.

MR. SCHMITTINGER: He said they may both be defeated.

MR. HARTNETT: The only thing I am saying is that you are diluting your vote for the constitutional amendment, and it may well be that both of them will be defeated, not that one is going to be passed over the other.

CHAIRMAN: If it is going to be presented to the legislature, necessarily so, the time factor involved in a constitutional convention in our opinion will not stay the hand of the Supreme Court from entering a decree.

151 MR. HARTNETT: Last night they wouldn't even believe, some of them, that anything had to be done.

CHAIRMAN: They will have to believe this. Sussex County believes this.

MR. JOHNSON: No question about it.

CHAIRMAN: Not only did Senator Johnson and I speak on this, but a couple of the senators themselves spoke to it, and Robert Tunnell, who had just come from a meeting that very afternoon of the defense attorneys, spoke to it. So this is clear and it can be made more clear if your representation does not now understand it.

So that when this is made clear, and this is understood, that they are squarely under the gun and that the constitutional convention in and of itself is not the answer, then it seems to me, and I subscribe to this, the viewpoint of the constitutional convention is merely this, that the people of the state of Delaware ought as of right to have the opportunity to select a constitutional convention which in itself will in a more deliberate fashion, in a more con-

sidered fashion, and with better judgment, more knowledge and more light, review that which the legislature has been compelled to do under the existing circumstances.

So I don't say that these are alternatives. I would never agree to submit them to the General Assembly as a choice.

Rather, I say that the one complements the other
152 under our system of government as I understand it.

MR. SCHMITTINGER: Mr. Chairman, may I ask a question for anyone to answer who cares to answer?

If the constitutional amendment which we worked out last week is fair and reasonable, which I think we all agreed to, and if it can be made part of our constitution in January, why do we need a constitutional convention?

CHAIRMAN: My answer to that is so that the people themselves, through chosen representatives, who are solely concerned with this problem and no other political problem at all, may have an opportunity to review our handiwork in the light of future developments, and in the light of greater knowledge. That is my answer; I have no further answer.

MR. KAVANAUGH: I would like to make one comment.

If I may coin a phrase, my father told me that people convinced against their will are of the same mind still. I don't think we are making any headway in changing anybody's mind or point of view.

MR. SCHMITTINGER: Maybe my mind will be changed with the answer to that question. I would like to hear other answers. I have heard Houston's.

MR. JOHNSON: I believe the gentlemen from Kent County are concerned not so much with what the people are going to do with this particular apportionment proposi-
153 tion. They are concerned with what the convention is going to do to other parts of the constitution, is that correct?

MR. HARTNETT: I am not, personally; the legislators are.

MR. JOHNSON: In other words, you would be willing to put this particular proposition as we recommend before

the constitutional convention. There isn't any other thing that they could do, in my opinion, except to adopt a plan similar to this. But what are they going to do with the rest of the constitution? I think that is what your legislators are concerned about.

MR. SCHMITTINGER: Yes.

MR. JOHNSON: And some of ours; not many. I believe our legislators more or less left it in our lap to go ahead and do what we thought best. Wasn't that your opinion, Houston?

CHAIRMAN: Yes.

MR. JOHNSON: They certainly gave us a vote of confidence, and I am not bound to that. I can see your point. It's a selfish point of view, but that's been the case right along. Otherwise we would have given New Castle County 20 representatives a long time ago.

MR. O'DONNELL: Mr. Chairman, if by chance both proposals should be submitted to the General Assembly, and if the people of the state are entirely satisfied with the first leg of the constitutional amendment which would have been adopted under my assumed state of facts, they can vote Nay to the referendum in November.

154

MR. SCHMITTINGER: Calling a convention?

MR. O'DONNELL: Yes. If they are entirely complacent and happy with our constitution as it would then stand with half an amendment, they are perfectly willing to vote Nay. So that it isn't at all certain that we will get a new constitution simply because the referendum is put on the ballot in November. First of all, the convention might meet and not adopt a new constitution, or—I have myself in reverse order here. The people might turn the referendum down, or if the referendum is approved, then the convention might never adopt a constitution. Or the constitutional convention might, and I think if we have a good plan very likely would, approve the plan that might have theretofore been adopted in the two-session legislature method.

So I don't think the two things are totally inconsistent, although they both certainly are working on the same idea. But once one leg is adopted there is a possibility at least that the constitutional convention would be turned down.

155 I don't think it would be but there certainly is that possibility. I think lots of people in the state of Delaware think we are long overdue.

MR. SCHMITTINGER: Frank, will you answer that question of mine? How will recommending the calling of a convention help passage of the amendment?

MR. O'DONNELL: I won't, necessarily, but I believe that if this committee adopts a resolution recommending both approaches, that we can honestly and fairly say to the court that Delaware is really attacking this problem and that we will have a solution to it in due course. We won't know which course of action we will take because we can't know about either until January, 1963, at the earliest, but it certainly will be evidence that we are endeavoring to clean our own house, and I think very strong evidence, if both proposals should be adopted.

CHAIRMAN: Gentlemen, let me ask you this. Has everyone gotten off their chest what they feel they should say, and has every question been asked that wants to be asked, and answered to the best of our ability?

If so, I am going to propose in the light of this discussion that we withhold any definitive action on the question of a constitutional convention so that all of us can have an opportunity to reflect upon it, and go to the next question that confronts us, and see how we make out on that and how closely we come to unanimity on this, and then come back to this.

156 We have had a pretty full and, I think, edifying discussion, and I think it is a very serious question. I think we all ought to reflect on it for a moment in the light of what has been said, and make up our mind, possibly at a later time, and go on to a discussion of the next problem.

MR. KAVANAUGH: I concur, with the hope that there will be unanimity.

CHAIRMAN: Yes. This is a very heavy responsibility of the Chairman to try to bring this about.

MR. JOHNSON: It's a problem. In other words, I don't think the lower counties are going along out of the goodness of their heart to give you ten or fifteen more representatives.

MR. HARTNETT: I have become so much enthused about the constitutional amendment that I don't want to see it jeopardized.

CHAIRMAN: Let's go on to the constitutional amendment, not for purposes of further discussion but for the purpose of taking definitive action later on.

We have before us for discussion the question of the House, and it is a two-pronged question. Number one, shall the present districts have a minimum of one? Number two, what is the population factor that shall be used to determine the number of representatives with the heavily populated districts you have?

157 Shall we approach the first question first, and that is, whether or not we shall retain in the present representative districts a minimum of one vote?

Of course, you realize this jumps over a rather obvious question: Shall we retain the present representative districts?

MR. HARTNETT: I thought we decided that we would retain the present representative districts.

MR. WILSON: We did not decide it.

CHAIRMAN: Mr. Secretary, what did we decide?

MR. SCHMITTINGER: I'll have to re-read that.

MR. O'DONNELL: I recall Mr. Wilson reserving this issue.

CHAIRMAN: Then I will back up one step further and say it is a three-pronged question. Do we want to go into the question of redistricting the state of Delaware when we come to determine the plan of apportionment for the House?

MR. WILSON: If you are looking to me first, I would be in favor of retaining the present districts, but I am also in favor of combining districts for the sake of reducing the adjustment of the population. We determined when we settled on the Senate that the Senate would be a geographical proposition and that the House would
158 be based on population. You can't properly apportion when you give one representative district with 1,600 the same as another district with 22,000. That is a ratio of about 14 to 1.

CHAIRMAN: What you are saying, then—perhaps I will paraphrase it in a more direct way—is that you are in favor of limited redistricting, in the sense of consolidated districting?

MR. WILSON: Yes, and still keep the district lines. I might refer to the court decision in the Tennessee case: "It leads to but one conclusion, namely, that the Tennessee reapportionment is a crazy quilt without a rational basis. As admitted, there is a wide disparity of voting strength between the large and the small counties. Some samples are. . . ." and then it goes on to give examples.

This is pointing out evidence of lack of proper apportionment, and if we adopt here a 14 to 1 ratio we are flying right in the face of a Supreme Court Justice's opinion of bad apportionment.

MR. O'DONNELL: That is a question of when one bad apple makes the barrel rotten. We would be moving in the right direction, as I study the figures; we would be curing almost all the present inequities and we would be providing for future growth. With 22,500, if we base it on 15,000, which I think is too large, but if it is
159 15,000 or a major fraction thereof, 22,501 would get you two.

MR. WILSON: Yes.

MR. O'DONNELL: So it would be about 1 to 10, roughly speaking. However, some of these smaller districts are composed of a lot of undeveloped geography, and I be-

lieve that some of that inequity might be removed sooner than I think.

And I wonder, so long as we have a good scheme, 1 to 15,000 people or major fraction thereof, if in our scheme we do have some exceptions whether that would invalidate the scheme? The court hasn't exactly said that. They have said in these other cases, you don't have any scheme, you are all balled up to begin with.

CHAIRMAN: No rational plan.

MR. O'DONNELL: That's right. If we have a rational plan, as each area grows it will get more and more. If Brandywine Hundred kept growing it would get an indefinite number. If we have a rational plan, a unit of 15,000, or 12,000, even if we have several districts in the state that had not reached that number but we still had a rational plan, I wonder whether the discrepancy would invalidate it.

I do not have the answer to that question; I just pose it. I don't think anyone really has the answer to it because the court hasn't spoken with respect to it.

But I do see your point, and I question whether
160 it really would invalidate it so long as we had an otherwise rational plan.

MR. WILSON: The only reply that I can make is that those districts that I am talking about have not grown in the last ten years.

CHAIRMAN: Let's get a first viewpoint on this; then we will get into the discussion.

Mr. Hartnett; this is on the question of redistricting either in the sense of changing existing boundary lines or in the sense of consolidating existing districts.

MR. HARTNETT: I think the key to it is whether we have a rational plan, and Mr. Wilson spoke at great length last time about that rational plan, and the Supreme Court said in the Tennessee case that there was no rational plan, that it was a crazy quilt.

I think that a plan of leaving the present district boundaries as they are and giving each district a minimum of

one, with additional representation as they reach the quotient, is a rational plan. This same type of rational plan has been upheld by the Idaho Supreme Court. In Idaho they have the same thing. Each representative district, no matter how small the population, is entitled to one, and then with a quotient, as you reach that quotient
161 you get another representative for that quotient. Therefore, there is some precedent for upholding it.

This does not mean, of course, that the United States Supreme Court is going to buy the Idaho Supreme Court decision, but at least it is something to cite; at least it is something to set forth as being something which has been upheld.

I think, along the practical viewpoint, we reach the same problem that we reached when we talked about the Senate. Are we going to take away two senators from one county? I think you cannot expect a member of the General Assembly to vote to abolish his own seat. They are not going to do it unless some court absolutely and positively says that they have to.

It may be that the Supreme Court five years, or ten years, or fifteen years from now will say that you can't have a representative district with a minimum of one unless you have a quotient of population there. But until the court says so, I think we should present a plan leaving the representative districts as they are, giving each representative district at least one, and then as they reach the quotient giving them an extra member. I think this is our only hope of getting it passed.

I can't conceive of the representative from Blackbird Hundred, or Appoquinimink Hundred, voting
162 to abolish his office by combining it.

To say that these districts haven't grown in the last ten years I don't think is pertinent because Kent County hadn't grown until the last ten years but since then it has doubled its population. But up until ten years ago the Kent County population had been extremely stable.

The population growth of Delaware, I think, is moving

south. I think New Castle County is no longer as attractive to industry as it was because maybe the prime industrial sites have been taken up, and you are going to find industry moving down into Kent, and after we become saturated, down into Sussex.

Also, many of the districts in Kent County are not that small. I would say the average size of a district in Kent County is somewhere in the area of five or ten thousand population. That is within the realm of being rational.

Therefore, I think our approach ought to be keeping the districts as they are, one representative for each district, and then adding such representatives as necessary to add for each quotient.

CHAIRMAN: Senator Johnson.

MR. JOHNSON: I was going to say that these comments by the judge on the Tennessee case were made based on present representation.

163 MR. WILSON: Yes.

MR. JOHNSON: That is crazy quilt. If that is corrected along the lines of the plan that we have suggested, he might not call it crazy quilt.

MR. WILSON: Except that we would still have greater disparity, as he has cited.

MR. JOHNSON: This is a New Castle County problem.

MR. O'DONNELL: Not entirely.

MR. HARTNETT: The greatest disparity is in New Castle County.

MR. O'DONNELL: In Sussex, in your 8th District, Senator, you are not much better than we are in our 15th, by 1,300 people; still you've got a problem there.

You've got a problem here in your 9th. Kent has problems along these lines in their 3rd, 4th, 6th, 9th and 10th.

That is one of the things I had in mind when I was advocating a small number, small quotient, to try to reduce the disparity.

MR. JOHNSON: You only have three districts under 5,000 in New Castle, and you have two at 5,000, and the rest are pretty well up there.

In other words, what would be your plan of consolidating? Say the 14th and 15th? The 12th and 13th?

164 MR. WILSON: The 11th, 12th, 13th, 14th and 15th.

MR. JOHNSON: From 12 down is where your problem exists.

MR. WILSON: Your 11th and 12th would give you 12,700, and the 13th, 14th and 15th would give you about 9,000.

MR. HARTNETT: Actually, New Castle County might lose more representation.

MR. JOHNSON: When you consolidate it on the basis of 15,000 you would only get one representative.

MR. HARTNETT: In five districts you get 15,000, in New Castle County.

MR. KAVANAUGH: With the permission of the Chair, I think your instructions were that we get first impressions and then come back.

CHAIRMAN: Yes, Senator, have you completed your statement?

MR. JOHNSON: Yes.

CHAIRMAN: Mr. O'Donnell.

MR. O'DONNELL: I think I have stated mine; I apologize.

CHAIRMAN: All right. Mr. Kavanaugh.

MR. KAVANAUGH: I would say this, that with a view to my conviction that I would recommend both the

165 amendment and the convention legislation, and mindful of the fact that we have pending legislation, and the court's responsibility in determining the issues presented to it, that it will look at the total picture and will not content itself with the equities in the lower branch or the equities in the upper branch, but rather will address itself to the equities in the total General Assembly, I would favor a rational plan which, along the lines of Mr. Wilson's calls for consolidation.

But I would add one further point, and that would be division within a representative district which is larger, population-wise, than the ideal figure that you get from

dividing the total number of representatives in the lower house into the current Federal census figure.

For example, if we determine that the lower house should have a maximum number of 35, and we divide that number into 446,292—if my memory is right—I think you get a quotient somewhere in the neighborhood of 12,271.

MR. WILSON: 12,700.

MR. O'DONNELL: 12,751.

MR. KAVANAUGH: So that addressing myself not only to consolidation but also division, in those areas where you would need to combine, consolidate representative districts to get to this ideal, and in other representative districts which in and of themselves today have a population
166 which is in excess of our ideal quotient, this type of rational plan appeals to me as a starting point for discussion.

My comment with respect to using any arbitrary quotient, whether it be 12,000, 15,000, 20,000, or any figure you might select, is that from the standpoint of determining whether we should add six to New Castle, ten to New Castle, sixteen to New Castle, one to Kent, or whatever it might come out to, in my view when the court looks at the total picture what it is going to come up with, since we have already determined that there is going to be an equal number in the upper house, what you have done by using such a quotient is to preserve the very balance of power which we regard today as inequitable, namely, if 20 per cent, or 23 per cent of the legislators today control, if the legislators of 23 per cent of the population control, then I think you are projecting that same inequity when all you do is add 4 to the Senate and 10 or 12 to the Lower House.

Those are my remarks.

CHAIRMAN: Mr. Schmittinger.

MR. SCHMITTINGER: I don't want to add anything except to say that we've got about a week to come up with a plan for a constitutional amendment, and if we are going

to recommend one. I think to talk in terms of redistricting, and subdividing, and determining ideal quotients, while in theory is very fine, perhaps, it isn't going to give us an answer in the time that we have got to get an answer.

I think that the present 35 Representative Districts by coincidence can be a reasonable solution when we use the quotient figure that we were talking about, and add representatives to the districts, in that, as has already been pointed out, the future growth of this state is in these areas where the population is not up to some of the areas in the northern part of the state.

CHAIRMAN: I don't want to add to much to this phase of the discussion but I want to subscribe to the view that we originally conceived to be our problem, and that is, number one, to devise a plan that will meet the test of the 14th Amendment, which must be rational on the one hand, and not invidious on the other; and two, we also must devise a plan which will be palatable to the General Assembly.

I can see from the second point of view many bugs in getting something that is palatable to the General Assembly when we toy with the established Representative Districts. I think that we should approach that with full knowledge that the General Assembly will not look upon that with a great amount of favor.

I also feel that if such radical changes are to be made in our legislative structure, from the point of view of redistricting, that this perhaps should be something that should come from a constitutional convention, if a plan can be devised here and now and adopted on a two-step basis which meets the test of the Federal Constitution.

Also, I just want to add one other thought, and that is that this idea, as a part of a rational plan of giving a minimum of one representative to a given established Representative District, is a part of the Federal system in the sense that every state, no matter how small its population

may be, is entitled to one representative in the Congress of the United States.

So from the point of view of rationality, to that extent at least, this lends credence to the rationale of a plan which we conceive giving a minimum of one representative to each of the established historic representative districts of this state.

Gentlemen, I don't want to cut off any further discussion. Would you like to discuss this further or would you like to proceed to the entertainment of a motion and action on the motion?

MR. KAVANAUGH: I think we ought to let the court reporter take a break.

CHAIRMAN: Very well. We'll take a ten-minute recess.

(Brief recess)

181 THE CHAIRMAN: Gentlemen, do I have any motions now with respect to redistricting, or retaining the Representative Districts with the minimum of one vote?

MR. SCHMITTINGER: Mr. Chairman, I move that the 35 Representative Districts as presently constituted be retained as the basis of the House, and that each Representative District be entitled to a minimum of one vote.

THE CHAIRMAN: Do I hear a second?

MR. JOHNSON: I will second the motion.

THE CHAIRMAN: Any further discussion?

MR. O'DONNELL: Yes. I think I am in general sympathy ther subdivided into Representative Districts for each multiple or major fraction thereof.

There is a very basic question. I am not thinking of having all the five or six, or whatever it may be, Representatives who would be representing Brandywine Hundred as it now exists, at large in Brandywine Hundred. I am thinking of having Brandywine Hundred divided into convenient Representative Districts for representation by a man or woman of that Representative District.

So that I would think that the large present districts would have to be subdivided.

MR. HARTNETT: I think we ought to take it one step at a time.

MR. SCHMITTINGER: My motion I would expect to be followed by a second and a third motion with reference to the division of this into precincts.

THE CHAIRMAN: The present motion is that insofar as the existing Representative Districts are concerned, each of them shall be entitled to a minimum of one Representative with one vote each.

183 MR. SCHMITTINGER: And I would state, just to clarify the matter, that I would then expect a second motion to discuss a quotient, and adding Representatives based on that.

THE CHAIRMAN: And that quotient would be applied with respect to how those adidtional districts would be entitled to additional Representatives.

MR. SCHMITTINGER: And the third motion would be with regard to the manner of breaking them down into precincts, whether the Legislature would do it, or the levy court or how it would be done.

THE CHAIRMAN: With that thought in mind, would that answer your problem, Mr. O'Donnell?

MR. O'DONNELL: Could we restate it? I may have misunderstood.

(The pending motion was read by the reporter.)

MR. O'DONNELL: That would not be satisfactory to me, just have one vote.

MR. HARTNETT: A minimum of one vote.

THE CHAIRMAN: With one vote?

MR. SCHMITTINGER: Yes.

THE CHAIRMAN: All right, having in mind, Mr. O'Donnell, what we are seeking, or what the mover is seeking——

MR. O'DONNELL: It is phraseology I have trouble

184 with there, not the intent.

THE CHAIRMAN: Would you want to attack the phraseology of it and come up with something that would suit you?

MR. KAVANAUGH: May I make a suggestion?

I think Frank is having the same problem I have, and that is whether the three parts are going to fit into a logical whole.

Again you get back to where I can buy Part A, and Part C, but I don't know what Part B is yet. Is there some other way we can approach this?

MR. SCHMITTINGER: That is understood, that after all three parts are in we would have to ratify all three parts. In fact, all of these proceedings are subject to that understanding.

MR. KAVANAUGH: Couldn't your motion embrace all of them?

THE CHAIRMAN: Well, if it can be done piecemeal, I would prefer it that way. If it cannot, then we will have to try something else. That is, if it is done piecemeal with a caveat reserved in each of us to revote on the whole. This is the way we have been proceeding.

MR. HARTNETT: I think it would keep our discussion within bounds if you would make it piecemeal as we
185 go along. That is the only reason for it. We can confine our discussion to one point, and then move on to the next point and the next point.

MR. SCHMITTINGER: Do you want to make an amendment to the motion, Frank?

THE CHAIRMAN: He is working one out on phraseology.

MR. O'DONNELL: Let me try this before I make a formal motion. I have not quite finished what I have in mind, but I will show you the course I am going on.

Be it resolved that a plan be adopted providing for one Representative from each of the present Representative Districts having less than 15,000 population, and that all present Representative Districts having a population of more than 15,000 shall be subdivided into additional Representative Districts——

MR. HARTNETT: Would you call it precincts? Because I don't think you can call it district. Because I don't think there can be more than 35 districts.

MR. O'DONNELL: Under my plan, no, there would be 45 districts at the moment. That is where you and I are falling apart—separated into 45 Representative Districts each of 15,000 population or major fraction thereof.

MR. SCHMITTINGER: Frank, does that mean there
186 would be 45 delegates to the constitutional convention?

MR. O'DONNELL: This hasn't anything to do with the delegates to the convention. This is on the 1960 Census as we worked it out last week. I have triple-checked our figures, and Mr. Wilson and I seem to get the same number.

MR. HARTNETT: Wait a minute. I don't think we are too far apart. I think our terminology is the difficulty.

My understanding of what we more or less had in mind last time was at least one representative from each of the 35 Representative Districts, and those Representative Districts which had more than 15,000 would get an additional with the motion, but it did not go quite far enough to suit me.

I am thinking along the lines of retaining—I had that in my notes last time. Excuse me a minute.

MR. KAVANAUGH: While you are looking, Frank, would Mr. Schmittinger give us an illustration of how this would work?

MR. SCHMITTINGER: Regardless of the population in each Representative District, that district would have one vote, one Representative. Then I presume this motion will be followed by another motion providing for a quotient which will add additional Representatives to the existing Districts based on population.

MR. O'DONNELL: I had in mind subdividing the
182 larger districts, and I thought that it would be proper to have a motion that all of the Representative Districts be retained except that any Representa-

tive District having more than a certain number be fur-representative for each quotient.

MR. O'DONNELL: That is right.

MR. HARTNETT: If a Representative District under this system would be entitled to four representatives, the Representative District would be broken down into precincts, and the person would run only from his precinct, but it would not be called a Representative District. It would still be the 5th Representative District from New Castle, but there would be five precincts within the Representative District.

MR. O'DONNELL: You may have been thinking about that, but I wasn't. I was thinking of a Representative representing an area designated as a Representative District.

187 MR. HARTNETT: Well, whether it is called a district or a precinct doesn't matter.

MR. O'DONNELL: It does under our composition in New Castle, because our Representative Districts, contrary to many of yours, are comprised of numerous election districts.

MR. HARTNETT: True. Ours are, too.

MR. O'DONNELL: I thought yours were——

MR. HARTNETT: I am using the word, precinct, because that appears nowhere in regard to the delegates.

MR. O'DONNELL: I think we should have as many Representative Districts as we have Representatives under the scheme, and it will keep growing as the population grows, and so will yours. This is a Congressional system.

THE CHAIRMAN: May I make a suggestion that we again go back to the piecemeal approach by saying that with regard to the House of Representatives, the plan to be adopted provided for one Representative from each of the present Representative Districts having less than the population quotient hereafter approved by this Committee, and stop right there?

MR HARTNETT: Under your system you will have to define the boundaries.

MR. O'DONNELL: Yes, as we have done in the past, positively.

188 THE CHAIRMAN: If you follow my thinking on this, this leaves open for discussion the quotient which is not yet resolved, and also how that quotient shall be applied to those districts where it is applicable. This would merely be with respect to the House of Representatives the plan provide for one Representative from each of the Representative Districts having less than the population quotient hereafter determined by this Committee.

MR. O'DONNELL: I would second that motion.

MR. HARTNETT: Would you repeat that?

THE CHAIRMAN: That with respect to the House of Representatives, the plan provide for one Representative from each of the present Representative Districts having less than the population quotient hereafter approved by this Committee.

MR. SCHMITTINGER: I will agree to that.

MR. HARTNETT: I will agree to that.

MR. KAVANAUGH: Could we add something to the word, "plan," the reapportionment plan?

THE CHAIRMAN: Yes, you can add that. With respect to the House of Representatives, the reapportionment plan provide for one Representative from each of the present Representative Districts having less than the population quotient hereafter approved by this Committee.

189 Does the seconder agree to that?

MR. JOHNSON: Yes.

MR. O'DONNELL: We all do.

THE CHAIRMAN: Any discussion?

MR. E. S. WILSON: I am afraid I am going to leave you, because I feel that aside from getting it through the State Legislature, you are ignoring the Federal Court that is hanging over our heads, and by having a plan that is roughly, be it 22,500, or 18,000, with a Representative District of 1,600, I think you are going to get slapped down by the Court.

MR. HARTNETT: Well, I would say in comment on Mr. Wilson's comment, that is probably an argument someone will make to the Court, and that is their privilege, but I don't think we can make that argument to the General Assembly, because I don't think the General Assembly would pass it.

MR. E. S. WILSON: Except one of our basic principles here was to meet, and devise a scheme which would be between the two. One was a Court decision, and one was passage by the State Legislature.

MR. HARTNETT: I think this will stand the test of the Court, but I can see where someone would argue differently, and that is their privilege, of course.

THE CHAIRMAN: Any further discussion?

190 MR. SCHMITTINGER: I think Mr. Wilson has made his position clear, and I would like to suggest that without any formal vote we just go on to the next phase of it, and possibly when the whole thing is worked out, he would find the whole plan acceptable, although he may not at this point.

THE CHAIRMAN: Well, I have this suggestion, that we have got to move along with some positive action on this thing. If, at the end of the whole plan, Mr. Wilson would then like to change his vote on this, he can have it changed on the record, and so can any of the rest of us.

MR. SCHMITTINGER: Right.

THE CHAIRMAN: So if there is no further discussion, are you ready for this particular question, which has to do with one facet of the plan for reapportionment?

All those in favor raise their right hand.

(For the motion: Houston Wilson, Thomas L. Johnson, Frank O'Donnell, Harold Schmittinger, and Maurice A. Hartnett, III.)

THE CHAIRMAN: All those opposed?

(Against the motion: Gerard P. Kavanaugh, and E. S. Wilson.)

THE CHAIRMAN: All right, shall we now attack the question of quotient? If so, I will start with Mr. Wilson.

191 MR. E. S. WILSON: We have talked about 15,000, and we have talked about 12,000. There is to my mind argument for both sides.

Frank has mentioned, and I concur, that the 12,000 would make the disparity between the smaller districts, if we use 12,000 and 18,000, that much less, but it is only a small amount less.

With our Hundreds growing so fast, we will soon get up to a 55-member Legislature, with a 12,000 quotient. And while I don't have any strong feelings for either the 12,000 or 15,000, I do favor the 15,000 slightly. But I would be agreeable, really, to either.

THE CHAIRMAN: Mr. Hartnett.

MR. HARTNETT: We seem to be going over the same ground we went over the last time, and I find myself about ready to make the same arguments I made the last time. I guess I am getting tired of saying the same things over again.

I am in favor of the 15,000 quotient. I don't think it is out of line.

Someone has said that some political scientist has said 12,000 is the ideal for a person to represent. I don't think 15,000 is that far removed from the ideal. I think 15,000 would give us a workable House.

192 I don't want to see the House get too large. We are going to have a housing problem in Dover, if it does.

I think we sat down last time and figured out the 15,000 quotient would give New Castle County 25 Representatives, and I feel that is fair.

I feel, as I said, I can support 15,000, and I think I can go down in Kent County and justify that support. If we get into 12,000, I think we are going to have a little difficulty getting that job done.

THE CHAIRMAN: Senator Johnson.

MR. JOHNSON: I would favor the 15,000 quotient.

THE CHAIRMAN: Mr. O'Donnell?

MR. O'DONNELL: I favor 12,000 for reasons I have heretofore stated. However, I would not resist a motion based upon 15,000.

THE CHAIRMAN: Mr. Kavanaugh.

MR. KAVANAUGH: If it is not inconsistent with my previous vote, I would go along with the 15,000 quotient.

THE CHAIRMAN: Mr. Schmittinger?

MR. SCHMITTINGER: I would support the 15,000 quotient, or major portion thereof, which we discussed last time. And I don't think there is anything to be added to that.

THE CHAIRMAN: I certainly will go along with the
193 15,000. However, I do want to say that at the meeting last night in Sussex County they did talk in terms of a round figure in the sense of a major fraction such as using 16,000, an even number, which would mean that 8,001 would be a major portion thereof and a figure easier to analyze.

Would this change it at all?

MR. KAVANAUGH: We can work it out quickly.

MR. HARTNETT: I have some reservations about the major fraction. I don't know at the moment.

THE CHAIRMAN: The major fraction here would be in terms of 501.

MR. HARTNETT: I have some question about whether the quotient ought to be 15,000, period, or if it should be 15,000 and a major fraction thereof.

THE CHAIRMAN: It is 15,000 or a major fraction thereof. That is what it would be understood?

MR. E. S. WILSON: Yes.

THE CHAIRMAN: In other words, under this quotient, as I understand our previous discussion, when you got to 22,501 it would be two Representatives.

MR. HARTNETT: Why should it be a quotient of 15,000 plus a major fraction?

THE CHAIRMAN: You wouldn't get your 10 addi-
194 tional for New Castle County unless you did that.

MR. O'DONNELL: That is right. And the basis for it is that you should not have to wait until you have exactly 15,000. 14,000 people should be entitled to representation, or 13,000. And it has to shift on something, so it is thought that a major fraction thereof would entitle the District to another Representative so the figure would be 22,501.

THE CHAIRMAN: Can we work out the number on a 16,000 quotient? Have you got your 1960 New Castle figures before you?

MR. O'DONNELL: Yes.

THE CHAIRMAN: Number 1 would be 1 additional. I am putting down totals now. If you had 16,000, you would have 2 for No. 2.

MR. O'DONNELL: Right.

THE CHAIRMAN: No. 3 would have 1. No. 4 would have 1. No. 5 would have 2. No. 4 would have 6. No. 7 would have 3. No. 8 would be 1. No. 9 would be 1. No. 10 would be 2?

MR. O'DONNELL: No. 10 would be 3 by 292 people.

THE CHAIRMAN: Yes, it would be 3.

MR. O'DONNELL: All the others would be 1.

THE CHAIRMAN: No. 11 would be 1, No. 12 would be 1, No. 13 would be 1, No. 14 would be 1, No. 15 would be 1. That is a total of 24.

195 MR. O'DONNELL: We would lose 1 vote.

MR. E. S. WILSON: And we would lose it in the District that is growing the fastest, No. 8.

MR. O'DONNELL: As a matter of principle, we are getting farther away.

MR. E. S. WILSON: You are moving farther away.

MR. SCHMITTINGER: What was the reason for the 16,000?

THE CHAIRMAN: Because on the major fraction it would be a round figure.

MR. KAVANAUGH: How about dropping down to 14?

MR. O'DONNELL: I would second that motion.

MR. HARTNETT: I think people think in terms of 5, 10, 15, 20.

MR. JOHNSON: We had one legislator a[illegible] for seventeen five, so you get all kinds of figures.

THE CHAIRMAN: I am sure we would have difficulty in our lower counties if we went down from what the report was. But if going up will reduce the 10 to 9, we will vote to go to 15,000.

Does somebody want to make the motion?

This has to do with the population quotient by which it shall be determined which of the Representative Districts shall have additional representation. The motion
196 would be 15,000 or a major fraction thereof.

MR. SCHMITTINGER: Well, it would not be additional, would it, because they have already won by virtue of your first motion.

THE CHAIRMAN: Yes.

MR. O'DONNELL: 22,501 would give you 2 Representatives.

MR. SCHMITTINGER: So you would say for each 15,000 population or major fraction thereof in excess of 15,000, the Representative District shall be entitled to——

MR. O'DONNELL: Shall be further subdivided.

THE CHAIRMAN: Well, we will get to the question of how it should be subdivided. Shall be allocated at this time. How it shall be allocated will be a third matter.

All right, then, this would be that an additional Representative under the apportionment plan for the House of Representatives shall be allocated for each additional 15,000 population or major portion thereof in excess of the original 15,000.

Does anybody want to make that motion?

MR. SCHMITTINGER: Well, I so move.

THE CHAIRMAN: Any second?

MR. JOHNSON: I will second the motion.

THE CHAIRMAN: Any further discussion?

197 MR. HARTNETT: One comment. I am against the major fraction—not at the present time. I think New Castle County ought to have 25, but I am against establishing that principle for the future. But I will vote for this motion.

THE CHAIRMAN: Any further comments?

If not, all those in favor raise their right hand.

MR. E. S. WILSON: If I am not conflicting with the first part of it.

THE CHAIRMAN: It is understood that you have a right to review the whole.

All right, it is unanimous.

Now we come to the question of how these additional Representatives to be allocated shall be allocated.

MR. O'DONNELL: As I understand, Mr. Hartnett's problem and mine is one of nomenclature.

MR. HARTNETT: Right.

MR. O'DONNELL: I think it would be inconsistent to have some people representing something they are going to call a precinct, and have others representing something you are going to call a Representative District.

MR. KAVANAUGH: You could use Representative District in the traditional historical concept, and reapportionment district in terms of the supernumeraries that are
198 going to be added to the Representative District.

MR. O'DONNELL: Oh, I don't think so. I think if you are going to divide it, it is going to be a Representative District no matter what you call it. And I think it is illogical to call it anything but a Representative District.

MR. KAVANAUGH: Then you are advocating the legislation specifically provide the metes and bounds for the division within a specific Representative District where there are 22,500 people, or plus?

MR. O'DONNELL: That is right, that each dicennial if a Representative District has grown to the extent that it is entitled to additional representation, it would have to be subdivided by metes and bounds just as in the Federal system.

MR. KAVANAUGH: But you would not subscribe to the principle of consolidation?

MR. SCHMITTINGER: Well, Frank, are you going to answer his question?

THE CHAIRMAN: That is his suggestion. Suppose we go along with the rest of the views.

MR. SCHMITTINGER: In the Federal system when a state is entitled to another Representative, the Representative is still part of the state, isn't he?

MR. O'DONNELL: Yes, he is, like from New York,
199 the First Congressional District, the Second Congressional District, and the Third Congressional District.

MR. SCHMITTINGER: Why wouldn't the new Representative still be part of the Representative District?

MR. O'DONNELL: Because it would be just exactly like Congressional Representatives. If the State gets 20 additional Representatives, it will have 20 additional Representative Districts. If Brandywine, in my mind, gets additional Representatives, they will have that many Representative Districts. They won't be one Representative District. They will be in Brandywine Hundred. Brandywine Hundred today is one Representative District. In the future it might be 5, or in the more distant future 8, or any other number.

MR. SCHMITTINGER: Well, you are proposing a separate entity. A newly-apportioned district would be a separate Representative District.

MR. O'DONNELL: Just like each one of your Representative Districts in a separate Representative District. We are not asking anything different from yours. Exactly like yours, and exactly like ours now. Each Representative has a Representative District, just as you do.

MR. HARTNETT: Who is going to set the boundaries?

MR. O'DONNELL: That is part of this overall pic-
200 ture that we have to decide.

Now, in order to have a good reapportionment statute we have to provide for the machinery for new boundaries to be set in the future. In most of the states, the reapportionment laws provide for the legislature to do it, and I intend to advocate that here.

MR. HARTNETT: By constitutional amendment, or by simple act?

MR. O'DONNELL: I would recommend that it be by simple act, every 10 years.

MR. HARTNETT: There is where your major fraction is going to make a tremendous difference, of course.

If you have Brandywine Hundred now as 58,000 entitled to 4, if you break it down into 5 Districts, then just as soon as those Districts reach an addition of 6,500——

MR. O'DONNELL: It would be entitled to another.

MR. HARTNETT: Each District might have a major fraction of the quotient, and therefore be entitled to 5 additional, whereas your total population in the County would not be entitled to it.

MR. E. S. WILSON: I agree with you in principle, Frank, but the question I raise is the difficulty of making the division quickly.

201 I would like to see us make the division mandatory for sometime in the future, and spell it out, maybe '64, or—I would hate to see us have to do it for '62.

MR. O'DONNELL: Well, you are abandoning a dicennial system?

MR. E. S. WILSON: Pardon?

MR. O'DONNELL: You would do it more frequently than every 10 years?

MR. E. S. WILSON: No; I think to start with we would do it, but give us time to organize to do it.

THE CHAIRMAN: Let a constitutional convention wrestle with it.

MR. E. S. WILSON: Let a constitutional convention do it. I am thinking of the chaos of doing it between now and November 6th.

MR. HARTNETT: Well, he wouldn't require it in this motion.

MR. O'DONNELL: No. We were talking about the future amendments to provide for additional population. How will that be done, not now, but how will it be done in 1970, the way I understand it.

MR. HARTNETT: Well, we have the problem for 1964. We would have to do it——

202 MR. O'DONNELL: Not in my mind, we don't.

MR. E. S. WILSON: I am in agreement with you that it should be Representative Districts in 1970.

MR. HARTNETT: What do you do about 1964?

MR. O'DONNELL: Nothing, because there is no Federal Census. These Federal Census figures will stand until 1970.

MR. HARTNETT: No, you don't understand. If the Legislature acts on this in August, and again in January, it will become effective for the election in 1964. And at that time New Castle County will be entitled to 10 additional Representatives. How are you going to set up your Representative Districts for 1964?

MR. O'DONNELL: As I envisage it, one of the last things we will come to tonight is how we will change in the future, and I was going to advocate that the apportionment of the State be reconsidered and the State be reapportioned every 10 years after the Federal Census.

The apportionment to be made now would be made on the 1960 Census.

MR. HARTNETT: By whom? Who would make the apportionment on the 1960 Census?

MR. O'DONNELL: If it is done by the two-legged approach, it would be done by the Legislature. If it is done——

203 MR. HARTNETT: You mean spelled out in this constitutional amendment?

MR. O'DONNELL: Yes.

MR. HARTNETT: This is why I think Mr. Wilson says this Committee hasn't time to do it.

MR. O'DONNELL: I wasn't thinking of this Committee doing it, either. It has to be incorporated into the plan, but I didn't think it was the function of this Committee to get down to that detail. I think our job is the broad scheme.

MR. HARTNETT: Who is going to draw the Bill, then?

MR. SCHMITTINGER: Don't we have to recommend the Bill?

MR. O'DONNELL: The details, or the principles of the Bill?

MR. HARTNETT: I thought the specific Bill in suitable form for presentation to the Governor's Committee.

MR. O'DONNELL: I envision us coming up with a general plan, and then if the overall Committee approves the general plan, we sit down and work out the geography within the districts, but it seems to me we would be putting a lot of water over the dam if we divide all of these districts, and then that Committee said, "No, we don't go along with your general plan."

I think we ought to report back with the general plan, and if they say, yes, they approve that general plan,
204 then we work out the geographical details.

They may say 20,000, and we would have spent hours dividing this on the basis of something they would not accept.

MR. HARTNETT: I think there is not enough time between now and our deadline, the first week in August, for anybody to come up with a specific boundary.

THE CHAIRMAN: May I speak to this? I have three reasons in my own mind why I would like to dissuade Frank from this approach.

Number one is the reason urged by the distinguished Mr. Wilson, that is, that it would create chaos, it seems to me, both in the parent committee and in the Legislature, to try to reformulate these districts to do some redistricting in New Castle County.

It would very possibly create enmity. It would misdirect the attention of the Legislature from the central problem and possibly send them off on a tangent with no result accomplished.

Number two, I think within the spirit of our previous discussion, which we have taken back to our Representatives at home, this was not a part of the concept, and in fact what you would be doing is taking, well, an apple tree which we presented as one apple tree with a prospective

growth which would entitle that apple tree to one
205 other apple, and dividing it and making five apple trees out of it so there would be five times the potential of that growth, and when that was recognized as one of the salient features of this plan, and once that was explained, it would be unacceptable to Kent and Sussex Counties.

So we would not be coming up with a practical plan that the Legislature would adopt.

Also, I think it would foment litigation as to what the effect of this would be upon the delegate strength of a constitutional convention if one were ever called. It would at least lead to extensive litigation on the question: Having created new Representative Districts, does that by direct inference affect the delegate strngth in a constitutional convntion? And if it is understood that there is this possibility, I think it would not be germane to the central issue, and we are not here to tamper with the provisions respecting delegate strength in a constitutional convention. We are here to deal with the reapportionment of the General Assembly.

These are my three reasons.

MR. O'DONNELL: Let me see if I understand.

You are advocating that the additional representation that might be given to the 58,000 people who reside
206 in Brandywine Hundred be elected at large within Brandywine Hundred?

THE CHAIRMAN: Yes, sir.

MR. HARTNETT: I do not agree with that.

MR. SCHMITTINGER: I do not necessarily agree with that.

MR. E. S. WILSON: I do for 1962.

THE CHAIRMAN: That is what I mean. I say that at some future date I am in thorough agreement that it should be separate Representative Districts.

MR. HARTNETT: What I had in mind was that Brandywine Hundred would be split into five precincts, and all approximately of equal size, approximately 15,000 people

in each precinct. There would be a Representative for each precinct, who would have to come from that precinct and be elected by the voters from that precinct.

The main reason I use the word, "precinct," is to get around this question: Are we increasing the Delegates to the constitutional convention?

And secondly, as I said before, if you break it down into five Districts, and give them another one every time you get a fraction of 15,000, you are multiplying the number of additional Representatives they would get, instead of adding them as you would be a major fraction of the total.

207 If we eliminate the major fraction, we wouldn't have that problem.

Secondly, I would say the General Assembly by statute, perhaps two-thirds majority, three-quarters majority, three-fifths, or something like that, would set the district, and that would take it out of our hands.

It would become germane after the constitutional amendment was approved. It would have to be done between then and '64.

THE CHAIRMAN: I would say that if we divided into precincts merely by calling it a precinct instead of a Representative District when in substance there would be a Representative from that District who would represent that District by whatever name it is called, I suspect that the Court would say that a rose by any other name is still as sweet, and is still a Representative District for purposes of the constitutional convention.

MR. HARTNETT: If you elected at large would you violate your principle of no Representative representing more than 15,000 people, which I thought was one of the big arguments which we were going to have to make, that 15,000 was not unreasonable?

THE CHAIRMAN: You would have three Representatives representing the people, not one.

208 MR. SCHMITTINGER: What would be your objection to electing by precinct?

THE CHAIRMAN: Electing by precincts, they would be thereby representing a precinct, and I say as a matter of substance the Court could well say that even though named a precinct, it is a Representative District, and that you cannot avoid the implication of a Representative District by calling it a precinct. It is a mere matter of semantics.

MR. SCHMITTINGER: What is the implication?

THE CHAIRMAN: That you are thereby increasing the strength of the Delegates to the constitutional convention.

MR. SCHMITTINGER: Would it be agreeable to provide also in our amendment that it be expressly understood that in no way is the Delegate strength to the constitutional convention as provided in our constitutional convention clause changed by this amendment?

MR. HARTNETT: I would be for that.

THE CHAIRMAN: That would be all right.

MR. SCHMITTINGER: Would you be willing to go along with that, Frank?

MR. KAVANAUGH: Would you restate that? My attention was distracted.

MR. O'DONNELL: I think if we do that, such a plan
209 would be certainly subject to attack in the courts, and be as unconstitutional as our present arrangement.

If our present arrangement is unconstitutional, then such an arrangement for a constitutional convention would also be unconstitutional.

We haven't been devoting much time here to the makeup of any future—well in the future constitutional convention. But I do believe if we have a constitutional convention it would have to be drafted in accordance with the law as announced in Baker vs. Carr. While it did not deal with constitutional conventions, certainly the principles are broad enough to apply to any representative body that might be representing the people of any state. So I think we would be just kidding ourselves in the first place. And in the second place I think we would be disenfranchising thousands of people.

So I would not go along with it, if you want to get into that.

MR. SCHMITTINGER: Isn't it true that the delegates to the Constitutional Convention of the United States were not based on population?

MR. O'DONNELL: Were not?

MR. SCHMITTINGER: Were not.

MR. O'DONNELL: That is right.

210 MR. HARTNETT: Are you saying now that if this goes through and New Castle County gets 25 Representatives, they will be entitled to 25 Delegates to the next constitutional convention?

MR. O'DONNELL: No, I didn't say that at all. But I am saying that if in the future a constitutional convention should be attacked, if it should be made up as presently provided, I think it would be unconstitutional.

THE CHAIRMAN: You say this next one would be running the risk of it?

MR. O'DONNELL: That is right.

MR. SCHMITTINGER: There are no cases with respect to Delegates to the convention.

MR. O'DONNELL: I realize that.

MR. HARTNETT: What you are saying is that you think there is a substantial question as to whether the next constitutional convention could get by without attack on the ground that it is not constituted in accordance with population?

MR. O'DONNELL: I am saying if it should be attacked, I think there is a good possibility that it might be held to be unconstitutional.

Now, that is pure conjecture on my part, because—

MR. HARTNETT: I know. I agree with you there is
211 a logical conclusion that follows from Baker vs. Carr.

MR. KAVANAUGH: Isn't there a foreseeable possibility, and wouldn't we be well advised to suggest legislation which would also include amending Section 2 in order to get over any possible constitutional attack?

MR. HARTNETT: Frank is of the opinion that we couldn't; that the next constitutional convention, it can be argued, will have to be on the basis of population.

MR. O'DONNELL: I don't think we reach that in this discussion we are having.

MR. E. S. WILSON: You are looking under the bed for a ghost.

THE CHAIRMAN: How about this suggestion to amend that provision of the constitution relating to conventions so as to provide that the Delegate strength of each county be determined by the number of counties and Representatives in the General Assembly from that county?

MR. KAVANAUGH: Do we need to qualify that further by relating it to a particular time, time of the convention?

THE CHAIRMAN: They would have to be companion amendments, to forego this risk that Frank has brought out and laid upon the table.

MR. O'DONNELL: But we are not really faced with
212 that problem at the moment.

The Federal case is not attacking our constitutional convention format.

THE CHAIRMAN: But we are faced with coming up with a practical plan that has a fair and reasonable opportunity of being adopted by the general Assembly. And if this great risk is brought to the attention of the members of the General Assembly—which in all honesty we should bring to their attention; we should not withhold anything from them—then I think from the whole point of view of devising a plan, in our opinion that would have a practical opportunity of passing the General Assembly, we have to face directly this.

MR. KAVANAUGH: When opening the back door for a peek, we should take a look.

That is a further argument for further companion legislation.

MR. SCHMITTINGER: I do not agree with the principle that Delegates to a constitutional convention should be based on population. I am not sure that is a correct principle.

THE CHAIRMAN: You are not willing to take the risk that the Courts will so hold?

MR. SCHMITTINGER: No, I say the thing should be studied. I don't think you should accept that as a principle.
213 I am not sure.

THE CHAIRMAN: Should we accept it as a risk, and so advise the General Assembly that here is a risk?

MR. SCHMITTINGER: What I am saying is that we may well conclude that a Delegate to a convention ought to be on a geographical basis.

MR. E. S. WILSON: You will never get that.

MR. O'DONNELL: We will have to tell the General Assembly that our plan, if we adopt a plan as we have been talking about,—if asked, I think we would have to tell them that we have endeavored to act within the few guidelines we can find in the Federal cases, but that we cannot express an opinion that it will be held to be constitutional. We cannot guarantee it will be held to be constitutional. So there are certain risks even in adopting a plan for reapportioning the General Assembly.

Then I would think the additional risk that some future constitutional convention might be attacked is another risk we might have to live with.

MR. HARTNETT: Well, I think the point is, if the downstate members of the General Assembly feel that by giving New Castle County 10 additional Representatives they are also going to give them 10 additional Delegates in the constitutional convention, I would say we are in bad shape.

MR. O'DONNELL: I don't think that follows, and if
214 that is what you got from what I said, I must not have made myself clear.

The constitutional convention makeup is now spelled out in the constitution.

> "Such convention shall be composed of forty-one Delegates, one of whom shall be chosen from each Representative District by the qualified electors thereof,

and two of whom shall be chosen from" each of the three counties.

MR. HARTNETT: Don't you think if there were 45 Representative Districts, the Court would say that means there should be 45 Delegates to the Constitutional Convention, plus two from each county?

MR. O'DONNELL: I will go further than that. If that section of the Constitution should be attacked in the future, in my opinion it will be found to be unconstitutional, under the Baker vs. Carr foreword.

MR. HARTNETT: How about if the constitutional convention was based on equal representation for each county?

MR. O'DONNELL: Without regard to population?

MR. HARTNETT: Yes.

MR. O'DONNELL: I think it would be found to be unconstitutional.

215 MR. SCHMITTINGER: Do you think Baker vs. Carr applies to convention Delegates?

MR. O'DONNELL: I don't think it does, but I think it is broad enough that it would be applied to a future constitutional convention if a constitutional convention did not take it into account.

MR. SCHMITTINGER: Well, you accept the principle of equal representation in the Senate by counties.

MR. O'DONNELL: Right.

MR. SCHMITTINGER: Do you find the basis for that in Baker vs. Carr?

THE CHAIRMAN: In order to amend the Constitution of the United States you have to have the approval of how many geographical areas?

MR. O'DONNELL: My recollection is 38.

THE CHAIRMAN: Does this have any bearing upon the fact that historically in the United States, at least, and in many of the states including Delaware, that the plan for amending the constitution either piecemeal or generally has never borne any relationship to population?

MR. O'DONNELL: No, I wouldn't buy that. Because the general assemblies are historically in part and now by compulsion going to have some relationship to population.

THE CHAIRMAN: Yes, but let me say this, that the
216 General Assembly of New York is representative of how many people? 8,000,000, shall we say?

MR. HARTNETT: 16,000,000.

THE CHAIRMAN: The General Assembly of the State of Delaware, which is the representative of this State in determining whether a constitutional amendment shall be adopted, represents how many people? 400,000? Yet they are not weighted votes. They are each of an equal strength.

MR. O'DONNELL: Well, your conception is that Baker vs. Carr would not be an authority for—

THE CHAIRMAN: I am saying that the general assembly of a state with respect to a Constitutional Amendment of the Federal Constitution stands in the same shoes as a Representative in a Representative District in the State of Delaware with respect to amending the Delaware Constitution, because the General Assembly of New York speaks for 16,000,000 people. The General Assembly of Delaware speaks for 400,000 people, but that spoken word carries exactly the same weight without regard to the relative population of the two States.

MR. O'DONNELL: I am following your logic, but I doubt if the United States Supreme Court would.

THE CHAIRMAN: Well, I must say I cannot follow
217 their logic either.

MR. KAVANAUGH: Can we review a little bit in order to bring me back into line with what it is to which we are at the moment directing our attention?

MR. O'DONNELL: They are alarmed because enlarging the number of Representative Districts might be interpreted to mean that New Castle gets more representation in a constitutional convention. That is the heart of the problem.

MR. KAVANAUGH: May I suggest, then, that for discussion we consider giving to the representative proportional voting strength?

MR. O'DONNELL: In the constitutional convention?

MR. KAVANAUGH: Yes. Instead of carving up Brandywine Hundred into five new Representative Districts, let's discuss the feasibility of giving the Representative from that present District a vote equal to 5.

MR. HARTNETT: 5 votes? When the roll is called, and he said, "Aye," it would be 5 ayes?

MR. KAVANAUGH: Yes.

MR. E. S. WILSON: From my point of view it is difficult for a single Representative to serve 58,000 people. What you would be doing is continuing that on to 65,000, and particularly in view of the last meeting we had when
218 we talked about the difficulty down here in Gumboro, or someplace else. Our difficulties are greater than your stable population, because we have apartment house units in which the whole apartment house is empty, and new *move* people move in, and we have to get those people in and register them to vote between elections. We can't even block the Districts in June, because those people are not there until October.

MR. HARTNETT: That is true.

THE CHAIRMAN: Let me throw out this proposal, that rather than redistricting, or rather than precincting, that as to these Representative Districts there be a provision that nominations shall come from subdivided geographical areas in the District.

MR. HARTNETT: I think unless you say a Representative is going to come from a 15,000 unit of population, you are violating your idea of saying that 15,000 is the maximum that a man ought to represent.

MR. KAVANAUGH: Then you are advocating voting at large in the District?

MR. HARTNETT: No, I am recommending that the District be split. My problem is one of terminology.

MR. KAVANAUGH: Don't you fly in the face of your own question?

219 MR. O'DONNELL: No, he gets around that by calling the area he is representing a precinct.

MR. E. S. WILSON: I say that is a fraud and deception.

MR. KAVANAUGH: The Court is not going to buy semantics.

THE CHAIRMAN: No.

MR. HARTNETT: I think it is going to buy semantics in the constitution when you use different words.

MR. E. S. WILSON: Would it help any if we said that we should elect them at large until 1964, or 1966, or 1968, or 1970, at some future date, so that it would relieve the pressure that they are feeling on this constitutional convention?

MR. SCHMITTINGER: What concerns me is what happens if you gave three counties equal representation to a constitutional convention.

MR. HARTNETT: What is the objection to that?

MR. SCHMITTINGER: As I recall it, the Delegates to our Federal Constitutional Convention were not based on population. They were based on geographic areas. Is that correct, Houston?

THE CHAIRMAN: Yes.

MR. HARTNETT: There is some difference, because the states were sovereign, and counties are not.

MR. KAVANAUGH: Let's make the counties sover-

220 eign, and get the Legislature to pass a county home rule bill.

MR. HARTNETT: That was 150 years ago.

MR. KAVANAUGH: Well, they had nothing to start with, and they eventually matured into a Constitutional Convention.

THE CHAIRMAN: Well, the Maryland Supreme Court undertook to answer that argument—I think it was Maryland, but I will have to check it out. However, the answer was that at the time of the National Constitutional Convention, the states were not at that time sovereign, and their sovereignty has been eroded away ever since.

MR. O'DONNELL: The proposal that the gentlemen from Kent County have put forward would have New Castle County moving backwards. At the present time out of the 41 Delegates to the convention, 19 are selected from New Castle County. You would have us go on a one-third basis.

Now, I have two objections to that. One, I don't think the people of New Castle representing the tremendous population they do are going to countenance a backward move in that direction. And in my humble opinion, although to the best of my knowledge, and I haven't researched this because it has not been discussed before, I do not believe any Court would accept such a move if it should be attacked on a constitutional basis, because it would ignore population.

221 MR. HARTNETT: Then by the same token no Court would allow the present Delegate strength—

MR. O'DONNELL: Positively, if it should be attacked.

MR. HARTNETT: I agree with you. That is why I don't think Kent and Sussex Counties can go along with the constitutional amendment.

MR. O'DONNELL: We have really come to a very fundamental point, Mr. Chairman.

THE CHAIRMAN: Yes, we have.

MR. KAVANAUGH: It only convinces me that you might as well face up to it and recommend consolidation and division on the basis of some type of a norm. Because you speak in behalf of New Castle, you are perfectly willing, as far as your County is concerned, to say, "I am for division."

MR. HARTNETT: Well, here is the problem, and it is right smack here, and you might as well face it.

In a constitutional convention a majority rules, and if the constitutional convention is composed of a majority from New Castle County, Kent and Sussex Counties will be afraid, and with a great deal of justification, that the Senate will not remain equal between the three counties. That is the bastion of representation for the rural areas.

Any way you cut the pie in the Senate, once the
222 Senate is put on the basis of population representa-

tion, there will be no representation for the rural areas, or down-State areas of Delaware. And if down-States Delaware permits a constitutional convention to come about whereby the majority of the delegates are from New Castle County, and the vote of the constitutional convention is by majority representation, I think we will see the end of geographical constitution.

As it is now, it takes three-quarters, and New Castle has to agree to it as well as Kent and Sussex. But in a constitutional convention, it is by majority rule.

MR. KAVANAUGH: If I were to express my feelings with regard to a constitutional convention, I would say to you I see nothing wrong with calling a constitutional convention which would prescribe a different percentage—

MR. HARTNETT: Except that Frank says, and I am inclined to agree with him, there is a good chance that any constitutional convention would have to be on the basis that the Delegates be apportioned according to population, under Baker vs. Carr, And I think that principle is going to go down eventually to city governments, county governments, school boards, and everything else in the country.

MR. KAVANAUGH: This again only indicates the wisdom of the companion legislation.

223 MR. HARTNETT: Quite the contrary. It indicates that down-State could not possibly go along with the constitutional amendment.

MR. KAVANAUGH: Well, I do not buy your statement that a constitutional convention would eliminate rural representation, in either branch of the Legislature.

MR. HARTNETT: Well, the Senate is what I am worried about. We are going to lose the House. Let's face it. That is in the cards. The question is whether the rural areas are going to be represented in the Senate, or not represented.

THE CHAIRMAN: Gentlemen, perhaps this criticism could be met by providing for an amendment to the constitution

that would require more than a mere majority of the vote, or such as the Federal Constitution requires:

> "The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, . . ." (Article V.)

It seems to me if we adopted a three-fourths rule
224 for constitutional conventions, we would be avoiding all of this.

MR. HARTNETT: Except that New Castle County may well have three-quarters.

THE CHAIRMAN: Well, perhaps I will say if that time should ever come New Castle should have three-quarters of the total representation in the General Assembly.

MR. HARTNETT: They have two-thirds of the population of the State now.

THE CHAIRMAN: I mean to say, under the format we have they would not come up with three-quarters of the Representatives in a constitutional convention.

MR. HARTNETT: I think if our provision as to the election of Delegates to the constitutional convention were attacked, the Court may well say that the Delegates to the constitutional convention must absolutely represent the population. And right today New Castle has two-thirds of the population of the State.

MR. O'DONNELL: I think, Mr. Chairman, we have to view it in this light: If we in the State of Delaware do not do something constructive towards the adoption of a rational plan for our Legislature, we may have a Legislature elected at large. And I do not have to spell out what that might

mean. Whereas, the constitutional convention prob-
225 lem you people are worried about is remote. It may or may not come about. But we are now faced with an immediate possibility of an election at large.

It seems to me that practical people—and I have found most Kent and Sussex people to be very practical—would rather run the risk of having some future constitutional convention which under present law could not come about until 1965 be declared to be unconstitutional, than to have an election at large in 1962.

Now, I would prefer to do something constructive so we can urge to the Court that we are doing something, and run the risk of any future litigation we might get into in connection with a constitutional convention which may or may not come about.

Because we do not know what the referendum, if any is held in November, will decide. But I think we do know—at least I think I know—that the Court is going to tell us to hold an election at large unles we can show them that we are in good faith proceeding to correct certain inequities.

I think that is the problem you people have to face up to.

Are you going to worry about a possible finding of unconstitutionality of the section dealing with constitutional conventions? Or are we going to permit the Federal Court to order an election at large?

226 MR. HARTNETT: I agree.

MR. E. S. WILSON: Isn't it true that the section of the Constitution regarding a Constitutional Convention is not a point at issue in this suit?

MR. O'DONNELL: That is so.

MR. HARTNETT: It won't take long to file suit.

THE CHAIRMAN: It is only a point of concern, not a point at issue.

MR. HARTNETT: This is true. But proceeding farther along the matter of the constitutional amendment, if we want to protect, insofar as possible, the present method of

electing the Delegates to the constitutional convention, realizing there is some possibility that the present system is unconstitutional, although we do not know whether it is or not, we from down-State do not want to weaken our position in the constitutional convention any more than we have to.

MR. O'DONNELL: Can you have your cake and eat it?

THE CHAIRMAN: That is the reason I am afraid of precincts.

MR. O'DONNELL: One of the reasons.

MR. SCHMITTINGER: Would this be a good place to stop?

MR. O'DONNELL: It would be for me.

THE CHAIRMAN: I was hoping we could get through
227 the whole thing tonight.

MR. O'DONNELL: Could we vote on that matter?

THE CHAIRMAN: All right. Your motion is that these additional Representatives in the House of Representatives shall be allocated on the basis of redistricting those present Representative Districts which are entitled to these additional Representatives?

MR. O'DONNELL: Yes.

MR. E. S. WILSON: Could you put in the date of '66?

MR. O'DONNELL: Doing it by 1966?

MR. HARTNETT: That would leave the 1964 election at large. What is the reason for that?

MR. O'DONNELL: I could buy that.

MR. WILSON: 1966.

MR. HARTNETT: What is the reason for 1966 and not 1964?

MR. WILSON: Purely organizational, practical.

MR. SCHMITTINGER: The Legislature would have all next year to do it, wouldn't it?

MR. HARTNETT: They would have two years to do it now.

MR. O'DONNELL: Not really. If it is going to be done next year, if it is going to be brought to a conclusion next year, they have got to get the first leg on now within the next—

228 MR. HARTNETT: Within the next two weeks. It has to be three months before the election.

MR. O'DONNELL: Right.

MR. HARTNETT: But then they wouldn't have to worry about it until after it is passed in January. Then it would have the period between January and 1964 to do it. There are two sessions of the General Assembly, 90 days, and 30 days.

MR. O'DONNELL: That does not count for constitutional purposes.

MR. HARTNETT: I know it does not, but my thought was that the redistricting would not be in the constitution. I thought you said you wouldn't affect the constitution.

MR. O'DONNELL: It is already in, and we have got to get it out in two sessions.

MR. HARTNETT: But how are you going to get it done within the five Districts? Are you going to set the metes and bounds, or do it by simple act of the General Assembly?

MR. O'DONNELL: That is the next issue we are going to discuss, the mechanics of that.

MR. HARTNETT: Well, it makes a big difference whether it is done in 1964 or 1966, the mechanics.

MR. KAVANAUGH: Would it help any, then, if you
229 had an alternative proposal that the limitation be the constitutional convention or 1966, whichever occurs first?

MR. HARNETT: My question is, why '66 instead of '64? That is my only question.

MR. E. S. WILSON: Just practicality, that is all.

MR. HARNETT: I say if it is going to be a simple act of the General Assembly to do it, there is no need for time. If it is going to go into the constitution and have to be put in there by amendment, of course, it would need the time.

MR. E. S. WILSON: You are thinking of it in the Legislature. I am thinking of it in the field.

MR. HARTNETT: Well, it wouldn't take 4 years to dump it out in the field.

THE CHAIRMAN: Gentlemen, we have a motion. Let's get on with this thing. Are we ready to vote on the motion?

MR. HARTNETT: Would you repeat the motion?

MR. E. S. WILSON: Will you add the 1966?

THE CHAIRMAN: Well, I don't know if I can repeat it accurately, but I will state it in substance as I understand it, subject to correction by Mr. O'Donnell.

It has been moved that with respect to the provisions of the plan relating to the reapportionment of the House of Representatives, the allocation of additional Repre-
230 sentatives in excess of one for each of the existing Representatives be on the basis of redistricting the present Representative District involved.

MR. E. S. WILSON: For the election of 1966.

THE CHAIRMAN: No, that is just period. He hasn't said that.

MR. O'DONNELL: That is a fair restatement of what I said.

THE CHAIRMAN: Very well. That has been seconded, I believe.

Any further discussion? (No response.)

All those in favor signify by raising their right hand.

(For the motion: Frank O'Donnell and E. S. Wilson.)

THE CHAIRMAN: Those opposed raise their right hand.

(Against the motion: Houston Wilson, Harold Schmittinger, Maurice A. Hartnett, III, Thomas L. Johnson, Gerard P. Kavanaugh.)

THE CHAIRMAN: All right, do I hear another proposal as to how it should be allocated?

MR. SCHMITTANGER: I will just say, by subdividing the Representative District according to population.

THE CHAIRMAN: All right, we have that motion.
231 Do I hear a second?

MR. HARTNETT: I will second that.

MR. KAVANAUGH: Could we have a discussion? How would that work?

MR. SCHMITTINGER: Well, I assume we are going to empower the Legislature to do this, and it would have to be either a precinct, or ward, or whatever you are going to call it, related to the 15,000 figure geographical area. Call it a precinct, or a ward, or whatever you want to call it, of the 1st Representative District, or of the 5th Representative District, or whatever.

THE CHAIRMAN: Do you understand the motion?

MR. KAVANAUGH: I am not sure that I do.

THE CHAIRMAN: All right, you may enquire farther into what the motion is.

MR. KAVANAUGH: I am not interested in nomenclature. I am primarily interested in the mechanics of the thing.

As I view the situation now, the lowest unit in your elective structure is the election district.

Now, these will run in the neighborhood of maybe 800 to 1,200 people. We have so many election districts, and we have some Representative Districts that have as many as 40 election districts.

232 MR. E. S. WILSON: You mean 48.

MR. KAVANAUGH: Well, there are 40 or 48, but they are pretty high in comparison to others that maybe have only 17 election districts.

When Harold says that the extra Representatives or additional Representatives will be elected on the basis of Districts, then I don't know whether he is talking about election districts—

MR. SCHMITTINGER: No, I wasn't talking about election districts.

MR. KAVANAUGH: What type of districts are you talking about that are not election districts?

MR. SCHMATTINGER: It would be a geographic distribution wherein 15,000 or more people reside who are entitled to elect one Representative to the General Assembly.

MR. KAVANAUGH: Then I direct your attention to the fact that all you are doing is transferring the problem of the Representative Districts as we now known them down to the lower unit in your election structure, necessarily the election district.

MR. HARTNETT: Not the present election district. We are creating a new one, because there is no—

MR. O'DONNELL: They are creating a new term.

MR. HARTNETT: I don't care whether you call it a
233 precinct, or what you call it.

MR. KAVANAUGH: To me a precinct means nothing more than a ward or a unit, the lowest unit of the people who comprise an elective division.

MR. HARTNETT: Coin a new word, then.

MR. O'DONNELL: They want to have a district Representative in the General Assembly whose area shall not be called a Representative District, becuase that is a term used in the constitutional section.

MR. E. S. WILSON: If you postpone it until '66 you will have your convention over with.

MR. HARTNETT: Well, I would be in favor of postponing until '66 if you didn't elect any until '66. But I think you ought to elect.

THE CHAIRMAN: Do you understand the motion?

MR. KAVANAUGH: I understand the motion, but I don't like it.

THE CHAIRMAN: Are you ready to vote?

All those in favor signify by raising their hand.

(For the motion: Thomas L. Johnson, Murice A. Hartnett, III, Harold Schmittinger.)

THE CHAIRMAN: Those opposed?

(Against the motion: Gerard P. Kavanaugh,
234 Frank O'Donnell, E. S. Wilson, and H. Wilson.)

MR. SCHMITTINGER: As I said five minutes ago, I think we are at a good place to stop.

THE CHAIRMAN: There is one other proposal, and that is that they be elected at large.

MR. O'DONNELL: From the present Representative Districts?

THE CHAIRMAN: Yes.

MR. E. S. WILSON: Until 1966.

THE CHAIRMAN: And thereafter what?

MR. E. S. WILSON: That would be decided by the Legislature or by a constiutional convention.

THE CHAIRMAN: The difficulty I find with this, Mr. Wilson, is, if we come up with a plan, and this is incorporated into a proposed constitutional amendment, then if nothing is done by 1966, the thing will be dangling, and we don't want to leave something dangling in our constitution.

MR. KAVANAUGH: Except that you would revert to the unequal situation which you now have and which is presently the subject of a court suit.

THE CHAIRMAN: That is a very real possiblity. I think the choice is not a question of delay. The choice lies between election at large, or election by geographic
235 subdivisions of existing Representative Districts.

Now, we have not been able to come to any affirmative action on electing them by way of subdividing the present Representative Districts by whatsoever name you may wish to use. Then can we come to some agreement that in view of the fact we have not been able to come to an agreement on that principle, we come to some agreement insofar as our plan is concerned and let the future deal with it later on, that they shall be elected at large, and let the future take care of itself?

MR. JOHNSON: You are electing your one by electing at large, anyway.

MR. O'DONNELL: At large within the Representative Districts.

THE CHAIRMAN: Yes, that is what I mean. That is the only alternative I can see now at this late hour.

MR. SCHMITTINGER: Well, Houston, are you satisfied this is the last meeting we are going to have? Is that why we are rushing this

MR. E. S. WILSON: I would hope so, because there was some comment that we would finish this off if he stayed all night at the second meeting. I would rather have a third meeting than to stay all night.

I would buy your suggestion of electing at large,
236 but I have difficulty with my consoience because I feel that ultimately they should be redistricted. So maybe you should say at large until 1966, and thereafter on a geographical basis.

MR. SCHMITTINGER: We may be able to find a solution at some other meeting. I think the problem is the delegate strenght at a constitutional convention.

MR. HARTNETT: Yes. If we could resolve that we could go along with calling them Representative Districts.

MR. E. S. WILSON: We have one question we haven't discussed very much, and I think it is essential that we provide how these districts shall be enlarged in the future.

MR. O'DONNELL: The mechanics.

MR. E. S. WILSON: Yes.

MR. KAVANAUGH: Mr. Ernest Wilson, just for discussion purposes, if you changed your date of 1966 to coincide with the next Federal Census, which would be 1970, would that help you?

THE CHAIRMAN: The great difficulty I have is going back to Sussex County and saying that here we are planting the seeds of five apple trees instead of one, under this quotient system. This is the thing that bothers me from a practical point of view of getting two-thirds majority of the General Assembly to adopt our plan, aside from their constitutional convention problem which is at the
237 present not immediately before us, but which is a point of concern.

MR. HARTNETT: My plan of calling them precincts would have taken care of that.

THE CHAIRMAN: You would necessarily have to say that when that particular precinct reached the quotient strength—

MR. HARTNETT: No, oh, no, no. When that Representative District got the additional quotient it would get an additional Representative, not when the precinct did.

MR. SCHMITTINGER: Just like the states.

MR. HARTNETT: Just like the states.

MR. O'DONNELL: Mr. Chairman, this question might be presented with regard to the motion of an election at large. If such a motion should be brought up, I would be in a very bad position, in that I had not discussed that possibility fully with some of the people I feel I represent. It has been discussed somewhat.

Since we have been unable to reach agreement on a plan based on redistricting, as I understood the term, and since it appears that we might have to resort to an at-large election within the present Representative Districts, at least for some number of years, I would like to discuss that with some of the people in New Castle County. I therefore regretfully—although I shared your hope that we
238 might conclude our meeting tonight, and I am not going to put this in the form of a motion now, because I don't want to force other people into it, but I would hope that this group might agree to adjourn to meet again so that some of us could discuss this with the people we represent.

I would imagine perhaps Mr. Kavanaugh and maybe Mr. Wilson have some reservation about this at-large provision, too, because his party might be seriously hurt, and some district of mine might be seriously hurt by a plan that would disenfranchise thousands of people, and this does in a sense, because we would be electing Representatives the way we are presently electing city council, and both of our parties, I believe, are moving towards a termination of that arrangement.

MR. E. S. WILSON: Yes.

MR. O'DONNELL: So it would be a bit illogical for us to adopt such a plan, at least without further discussion with our people. At least that is my sentiment, and I would like to throw out the fact without making it in the form of a motion, that perhaps we do adjourn shortly, because that really presents a very serious problem, and puts us in an inconsistent position with respect to city council, and puts us in a position where—well, we are not differing very much from what the Court might order us to do, anyway. It just puts us in a position where I have not had any guidance, and I would like to talk to some more

239 MR. E. S. WILSON: I feel the same way.

THE CHAIRMAN: Very well. Then suppose we leave that with the idea that it will be passed over until we have another meeting.

Is there any other problem in connection with the apportionment of the House that we have not yet covered thus far?

MR. HARTNETT: Yes. Assuming we all eventually agree that this Representative District is going to have to be broken down someway, somehow, how is it going to be done? That is, by whom is it going to be done?

THE CHAIRMAN: Well, that will be a facet of the thing we are going to pass over. But is there any other facet we have not covered?

MR. HARTNETT: Well, even if we elect them at large for the next two years, we all agree sometime it is going to be broken down.

THE CHAIRMAN: I think you probably want to consult with your so-called constituents on all facets of this problem.

MR. O'DONNELL: Yes.

MR. E. S. WILSON: Yes.

THE CHAIRMAN: Is there any other phase of this thing we have not yet covered as far as the plan is concerned for the House?

240 I thought we might go back to the Senate and deal with this question of how we are going to allocate the additional Senators.

MR. O'DONNELL: That is a Kent and Sussex problem. I would like to avoid discussion of that before we cover the rest of the plan.

THE CHAIRMAN: Well, I think Sussex has come up with its answer as far as it is concerned.

MR. O'DONNELL: Is there any general topic, general to all three counties, before we discuss that local problem?

MR. HARTNETT: I have one as to which I do not expect a decision tonight.

Are we going to set a maximum number with the idea then when that maximum number is reached there will be a reexamination of the whole problem?

I personally feel there should be a maximum number, otherwise the House of Representatives could reach a ridiculous size.

I think the decision should be to pick a number and say when it reaches that, there will be a general reapportionment and this whole thing will have to be gone through again, painful as it may be.

MR. SCHMITTINGER: You might do more than that
241 and pick a number and prescribe that the quotient would rise just as in the United States Constitution.

MR. O'DONNELL: By giving each District one, and putting a top on the largest District it seems to me we are being inconsistent.

It seems to me if we are going to have numerical representation, representation based on population, it has to be that unless we are going to break away from the basic one.

If you picked a number such as 50 and divide the State and said it will always be 50, and it will be strictly on the basis of numbers, then I do see a top. But if we are going to have a floor, such as we have here, then I feel we must

not have any ceiling, because we must have a representation on numbers.

THE CHAIRMAN: I say that is something that may well happen in the future. I do not anticipate it will happen in the foreseeable future. But when it does happen, I think Delaware should wrestle with that problem at that time. We do not have time to wrestle with it here.

MR. HARTNETT: The only problem is, if we set a maximum ceiling of, say, 60, then when it reaches that point it would bring it to a head. If we set no ceiling at all, the Legislature itself will be disinclined to set a ceiling, because they will not want to legislate themselves out of office.

242 THE CHAIRMAN: If you retain the principle of 1 per Representative District at the bottom, and set a ceiling at the top, this would weaken the plan in the eyes of the Court.

MR. HARTNETT: It would weaken it unless you said at that time there would be a reapportionment.

I admit you can't set the ceiling. You have got to provide when that ceiling is reached there would be a reapportionment.

THE CHAIRMAN: But there again when you say there will be a reapportionment, period, you would have to specify what the plan for reapportionment would be at that time. Or you would simply have a constitutional amendment that would say there would be a reapportionment at that particular moment, but suppose the order amending the processes were unavailable to you because the General Assembly, or however the constitution is to be amended, fails to do it?

MR. HARTNETT: Then the Federal Court would step in, as they did in the Tennessee case of Baker vs. Carr.

THE CHAIRMAN: Aren't we working on the principle of avoiding the Court's having to act?

MR. HARTNETT: I would agree, but I would also not like to see the General Assembly reach the size of 100 members.

THE CHAIRMAN: Wouldn't that be sufficient pressure in and of itself?

243 MR. HARTNETT: No, I am afraid it would't because the members of the General Assembly would have a vested interest at that time. They would say, "Let it go to 200."

MR. KAVANAUGH: How many people would you have to have in Delaware before it got to 100?

MR. E. S. WILSON: 2,000,000. Well, not quite that many.

MR. O'DONNELL: A million and a half, at 15,000 apiece.

MR. HARTNETT: Well, what would it have to be to be 100?

THE CHAIRMAN: That is what he says.

MR. O'DONNELL: A million and a half.

MR. KAVANAUGH: Well, I would like again to make this comment. I think we are not reaching the fundamental issue, and that is the question of redistricting. I think what we are doing is satisfying ourselves with an expedient, stopgap measure, whether you view it from the standpoint of quotients or any of the other ways that have been discussed here previously tonight. I think unless we get back to fundamentals and admit to ourselves that this is a problem that can only be solved by redistricting, we are going to flounder beyond the point where we can be of service to the parent body that brought us into being. Amend.

244 Is there a motion to adjourn?

THE CHAIRMAN: Before we adjourn, shall we take up the matter of the order of business at the next meeting, so we will have some agenda to go by?

Number one would be, as I understand it, the question of the allocation of the additional Representatives within the Representative Districts entitled thereto. Ths will be considered.

Number two. I think the general tenor is that Kent and Sussex Counties should come up with a proposal with respect to the allocation of the additional Senators. That will be our local responsibility for consideration of the entire Committee.

Those are the two matters which remain undetermined by the step-by-step procedure we have been taking so far.

MR. HARTNETT: The method of allocating. And, who is going to do the allocating?

MR. SCHMITTINGER: And when?

MR. KAVANAUGH: In the Senate, or the House?

MR. HARTNETT: The House.

THE CHAIRMAN: That is right. That is all a part of that problem No. 1, which is the question of how. And how would include method of allocating the additional
245 Representatives within the Representative Districts entitled thereto. That would inclule method.

The other is the question of how the additional Senators shall be allocated in Kent County and in Sussex County.

Then we will have an overall plan for final consideration if we jump those hurdles.

MR. O'DONNELL: When were you thinking of calling another meeting?

THE CHAIRMAN: I am open to suggestion. I think it should be as soon as possible.

This may be off the record.

(Following a discussion with regard to the time of the next meeting:)

THE CHAIRMAN: Gentlemen, a third matter on the agenda before we review the overall handiwork we have hammered out here would be the vote upon the question of the constitutional convention.

MR. O'DONNELL: We have decided among ourselves, Mr. Chairman, subject to the wishes of the larger group, that we would like to meet with our local people Friday night in Wilmington, so we also think that it would be well for us to have such a meeting prior to the time we meet with you people again.

Is that inconsistent with your thinking?

246 THE CHAIRMAN: Not at all.

(Following further discussion with regard to the time of the next meeting:)

THE CHAIRMAN: All right, gentlemen, do I hear a motion that we adjourn until 3 o'clock Saturday afternoon, and that we reconvene here again?

MR. SCHMITTINGER: Well, I will be here by 5 o'clock, and I would suggest there is a lot that could be done with the New Castle County problems before I get here.

THE CHAIRMAN: We can at least get a considerable amount of work done subject to your views, before you arrive.

MR. SCHMITTINGER: Yes.

MR. O'DONNELL: And we will reconvene here unless notified to come to some other place?

THE CHAIRMAN: Yes. And it is also agreed that I will notify the Governor that we shall be ready to present our report on Monday evening, July 23rd.

With that understanding, do I hear a motion to adjourn?

MR. KAVANAUGH: I so move.

THE CHAIRMAN: Very well. We are adjourned until 3:00, P. M., Saturday, at this same place.

(Whereupon at 12:05, A. M., July 18, 1962, the sub-committee meeting is adjourned to reconvene at 3:00, P. M., on Saturday, July 21, 1962, at the same place.)

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247 Sub-Committee meeting held in the Ridgely Room, Treadway Inn, Dover, Delaware, 3 o'clock p.m., July 21, 1962,

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248 PROCEEDINGS

(The meeting was called to order by Mr. Houston Wilson, Chairman, at 4:25 P. M., in the Ridgely Room of the Treadway Inn, Dover, Delaware.)

CHAIRMAN: Gentlemen, if there is no objection, until Mr. Schmittinger arrives I am going to designate Mr. Hartnett as Acting Secretary. He and Mr. Schmittinger are both from the same town and they can get their heads together.

Just before we adjourned the other night there was an outline of the agenda.

Number one is the question of the allocation of the additional representatives within the Representative districts entitled thereto.

Number two is that Kent and Sussex Counties should come up with a proposal with respect to the allocation of the additional senators for those counties. It would be a local responsibility for the consideration of the entire committee.

Number three would be the matter of the call of a constitutional convention.

Number four would be a review of the overall handiwork.

Perhaps it is possible for us to dispose of Number 2 rather rapidly. Senator Johnson and I have come
249 up with a proposal with respect to the allocation of the senators for Sussex County. Do you want to make that report, Senator?

MR. JOHNSON: We have suggested that the county be divided in half, and one senator elected from Representative Districts 1, 2, 3, 4, and 5, and the second senator be elected from Representative Districts numbers 6, 7, 8, 9 and 10.

That divides the county into two almost equally by area and population.

Mr. O'DONNELL: Does that superimpose a senator on top of other senatorial districts?

MR. WILSON: Yes.

MR. O'DONNELL: He would be running at large?

MR. JOHNSON: Yes.

MR. O'DONNELL: That is a new concept for Delaware polities.

CHAIRMAN: We thought there would be two choices: for both of them to run at large throughout the entire county, or to run at large throughout a division of the county.

MR. O'DONNELL: There was a third one: to realign the whole situation.

CHAIRMAN: The third one was to realign the entire county.

MR. O'DONNELL: I wasn't objecting; I was just
250 making sure I understood you.

CHAIRMAN: There would be a problem here of how they should be designated with respect to the geographical area. It seems to me they could be called either Senatorial District No. 6, or No. 7, or they could be called Senatorial District No. 1 at large, and Senatorial District No. 2 at Large, Sussex County.

Mr. Hartnett, you had done some thinking on that.

MR. HARTNETT: I took the liberty of drawing up a proposed draft for a constitutional amendment incorporating what we had agreed on. I felt that the most logical way to do it would be to call it Number 6, and then say the First, Second, Third, Fourth and Fifth Representative Districts, and then the Number 7 would be the Sixth, Seventh, Eighth, Ninth and Tenth Representative Districts. That would be consistent with the present wording of the constitution.

MR. O'DONNELL: And the people in those areas would vote for just one senatorial candidate?

CHAIRMAN: Yes, of these two.

MR. O'DONNELL: Under his arrangement.

MR. HARTNETT: Sometimes. Possibly they would be electing two senators.

MR. POPPITI: Wouldn't there be some occasion when they would be voting for a senator in their own district,
251 as it now exists, and then in addition to that be voting for the other senator representing the larger area?

CHAIRMAN: Yes. That's the reason I had in my own mind—I don't know that there is any great significance in calling it Senatorial District No. 1 at Large, and Senatorial District No. 2 at Large. Let's take the First Senatorial District, which is now composed of Reperesentative Districts 1 and 2. Conceivably they would be voting for sena-

tor in Senatorial District No. 1, and then they would be voting for a senator in Senatorial District No. 6, or in Senatorial District No. 1 at Large, whichever one you would want to call it.

MR. HARTNETT: I think if you want to use the "at large" it ought to be Number 6 at Large. I don't think you should have two Number 1's, it would be confusing. If you want to use 6 call it 6 at Large, or just 6. That is my personal opinion. Of course, in New Castle County they go to 7 already.

CHAIRMAN: Well, do you want to combine the two thoughts and call it 6 at Large and 7 at Large, so that they will know that these are districts at large rather than the old historic senatorial districts?

This would leave one other problem: the mechanics of getting the thing going. Which one of these two would serve for two years and the other for four years at the outset?

MR. HARTNETT: I arbitrarily picked No. 6, because
252 6 came first.

THE CHAIRMAN: Does that suit you?

MR. JOHNSON: That suits me.

THE CHAIRMAN: So the summary for Sussex County would be that these two senators would be elected from Senatorial District No. 6 at Large, composed of Representative Districts 1, 2, 3, 4, and 5, and from Senatorial District No. 7 at Large, which would be Representative Districts 6, 7, 8, 9 and 10. And at the outset the senator from Senatorial District No. 6 at Large would serve for two years, and the senator from Senatorial District No. 7 at Large for four years.

Shall we vote on this? Do I hear a motion?

MR. JOHNSON: I will make a motion. You draw the motion up, Mr. Hartnett.

MR. HARTNETT: Do you want it put in exact language? All right.

I move that the committee vote in favor of proposing a new section to the constitution, to read:

"The following words are added following the words number 5, the ninth and tenth Representative Districts, in that part of Article II, Section 2, of the constitution dealing with the senatorial districts in Sussex County: 'Number 6 at Large, the First, Second, Third, Fourth and Fifth Representative Districts; Number 7 at Large, the
253 Sixth, Seventh, Eighth, Ninth and Tenth Representative Districts."

I thought we would get Kent and Sussex together.

THE CHAIRMAN: We have the motion before us. Is there any discussion? This is as to Sussex County.

Any questions?

Are you ready for the question? All those in favor signify by raising your right hand.

Those opposed.

It's unanimous.

Now I'll call on Mr. Hartnett for the report on Kent County.

MR. HARTNETT: Kent County was exactly the same as Sussex; that is, Representative Districts Nos. 1, 2, 3, 4 and 5, and Representative Districts Nos. 6, 7, 8, 9 and 10. But Mr. Schmittinger has some objection to that, so I think we had better pass the proposed districts until he gets here. His proposal is that it be the 1st, 2nd, 5th, 7th and 8th to constitute the Sixth Senatorial District, and the 3rd, 4th, 6th, 9th and 10th Representative Districts to constitute the Seventh Senatorial District.

I don't have any objection. I think he feels that the Republicans would have a better chance that way.

THE CHAIRMAN: Say that again. Your proposal is
254 the same as Sussex; his is what?

MR. HARTNETT: The 1st, 2nd, 5th, 7th and 8th shall constitute the Sixth at Large district.

THE CHAIRMAN: Then that would leave the 3rd, 4th, 6th, 9th and 10th.

MR. KAVANAUGH: You are dividing it horizontally; he is dividing it longitudinally.

MR. HARTNETT: In either case they would be contiguous.

THE CHAIRMAN: One is a north-and-south division; the other is an east-and-west division.

MR. POPPITI: That's what it amounts to.

MR. HARTNETT: So I think perhaps we had better pass as to which specific districts they are going to be.

MR. POPPITI: At any rate, you are going to follow the same principle.

THE CHAIRMAN: I assume you will each want to present your views to the entire committee before we take a vote.

MR. POPPITI: The principle is going to be the same. They are going to divide the county in half and have two senatorial districts at large.

THE CHAIRMAN: That's right.

MR. HARTNETT: I think I can move, because Harold is in agreement with me, that the next section to be added
255 to the constitution will be:

"The following words are added immediately following the words added by section blank above: The first senators elected from the Sixth Senatorial District of Kent and Sussex Counties shall serve for a two-year term only. Thereafter their successors shall serve for a full four-year term."

THE CHAIRMAN: And the Number 7 at Large would be automatic?

MR. HARTNETT: Automatically four years. Since you say in Sussex County the Democrat would be for a two-year term, here it would be a Republican for a two-year term.

MR. KAVANAUGH: That would be pure coincidence.

THE CHAIRMAN: Do I hear a second to this proposal as to the two- and four-year term?

MR. POPPITI: I second the motion.

THE CHAIRMAN: Any discussion? If not, all those in favor signify by raising your right hand.

Those opposed.

It is unanimous.

Gentlemen, I guess we are ready to proceed to New Castle County. This has to do with the question of how the additional representatives in the Representative Districts entitled thereto shall be allocated.

MR. WILSON: I would like to propose that they be
256 elected at large until after the election of 1964, and the districts be subdivided for the 1966 election.

THE CHAIRMAN: And as to that subdivision, who shall be empowered?

MR. O'DONNELL: Elected at large, how?

MR. WILSON: By the hundreds.

THE CHAIRMAN: Up until when?

MR. WILSON: Until after the 1964 elections, and after that the district be split into representative districts.

THE CHAIRMAN: And who shall be authorized to do this? The General Assembly?

MR. WILSON: There are two or three bills now in which they have different people draw these district lines.

THE CHAIRMAN: They are drawn in the bills themselves, are they?

MR. WILSON: Yes. One is the Governor. Each one has a redistricting committee, and I think in view of the fact that this thing has to be carried on after the 1970 census and the 1980 census, we might just as well provide for that at the time we redistrict this.

The Governor's bill says the Governor, the Attorney General, the Supreme Court Justice, and the Governor is the chairman.

THE CHAIRMAN: Is that the Chief Justice?

257 MR. WILSON: Yes, the Chief Justice; and one member from each political party. And there shall not be more than three of the commission of any one party.

MR. KAVANAUGH: I am confused on that. There are two separate bills. One commission is a three-member commission consisting of the Governor, the Attorney Gen-

eral of the state, and the Chief Justice of the State Supreme Court. The second bill is a five-man commission consisting of the Governor, the President of the University of Delaware, the Farmers' Bank, and the head of each of the two political parties. Was that it?

MR. WILSON: Yes.

THE CHAIRMAN: Under your idea, following the 1964 election they will do the redistricting of these affected representative districts?

MR. WILSON: Yes.

THE CHAIRMAN: And then, carrying that on through, after the 1970 census has been duly published and certified, then they will carry it on throughout the entire state.

MR. WILSON: Right.

MR. O'DONNELL: What is your reason for waiting?

MR. WILSON: Purely to get time to get organized and get turned around. I am not sure that we will have
258 any elections—if we have a constitutional amendment we won't have an election until 1964.

MR. POPPITI: Why can't the new districts within the representative districts be set up—let's assume that we have agreement on our propsed constitutional amendment, and that it is passed immediately after the new legislature convenes in January. Then it is effective for 1964, is it not?

MR. WILSON: I am not sure that you can pass the constitutional convention—

MR. POPPITI: Just the amendment.

MR. WILSON: Oh, yes.

MR. POPPITI: Suppose we pass the amendment immediately, and the second leg immediately after the legislature convenes. Then the consitution has been amended. Why can't we then get into the legislature and set up the districts, the new divisions within the representative districts?

MR. O'DONNELL: It would have to be in the constitution.

THE CHAIRMAN: You mean authorize the redistricting committees?

MR. POPPITI: Yes. Why can't we do it before the 1964 elections, that's my point.

MR. KAVANAUGH: If you have to write it into the constitution your problem is going to be one of getting agreement on the geographical boundaries of the new
259 representative districts.

THE CHAIRMAN: Just for the purpose of clarification, what Mr. Poppiti is trying to say is that following this constitutional amendment, whichever one of these redistricting committee set-ups is the approved one, that that committee would then be authorized to redistrict the affected representative districts for 1964.

MR. POPPITI: Yes. Why do we wait until 1966, Ernie?

MR. WILSON: I haven't any great objection to 1964. I just shudder at the idea of doing it in 1962.

MR. POPPITI: You are going to have to face up to it anyhow.

MR. O'DONNELL: You would be doing it but it would not become operative until 1964.

MR. POPPITI: See, we are going to have an election now under the old basis. We can't do anything.

THE CHAIRMAN: Unless the court changes it.

MR. POPPITI: Yes. But assuming we are satisfied with our proposal, nothing happens at this election. The second leg is voted on in January, then why can't the redistricting committee function immediately and set up the new districts for the 1964 election?

MR. O'DONNELL: If you do it that way, of course it could. The other way to do it, and I realize there is
260 quite a time problem, would be to draw the lines so that there would be in the amendment, which might be adopted by the current session and the next session, provision so that they would be on the ballot in the new districts in 1964.

However, if I may say so, I think we have gotten the cart before the horse because this is the point that Maurice was disagreeing with. We might have to have two reports

with respect to this matter, but I wonder if Maurice, after discussing it with his people—I think Mr. Wilson's position, and mine, and Mike's and Jerry's, were the same, that they thought there should be new districts. We are now talking about when they will come to pass.

Are you still opposed to us having new districts?

MR. HARTNETT: Well, it's mainly a question of nomenclature. We still think that the present districts ought to be the basis for representation, and within those districts they should be divided into what I now preer to call divisions, rather than the word "precinct." The word "precinct" connotes something which it is not.

I would say the representatives of Brandywine Hundred, the Sixth Representative District, First Division, Second Division, Third Division, Fourth Division, as it may be necessary to have additional representatives there.

261 As to how Brandywine Hundred would be divided into divisions, it would be the same problem as to whether you call them representative districts or call them divisions whether you are going to do it in the constitutional amendment or whether you are going to delegate it to a commission to do.

MR. O'DONNELL: And the reason for your reluctance to call them districts is because of the constitutional convention?

MR. HARTNETT: That's part of it. The other part is that we are basing this on the assumption that the present 35 representative districts will all have at least one representative.

THE CHAIRMAN: Delegate.

MR. HARTNETT: That is more of an argument to justify that than that the present 35 representative districts are traditional and we shouldn't abandon them. It would be better to break them down into divisions because we will still retain the 35 representative districts, and there would be more justification that each of those districts should

have at least one, and then one for each 15,000 or major fraction thereof.

It may be a question of semantics whether you call them divisions or representative districts, except we would prefer to have them called divisions. You haven't convinced me of any strong reason why they should be
262 called representative districts.

MR. WILSON: Except that they are representative districts. That's the only argument we have.

MR. HARTNETT: He is a representative whether he comes from a division or a representative district. He still has one vote.

MR. POPPITI: I think it would be consistent to call them representative districts. Remember, our thought was in the beginning that we would start on the basis that each of the historical representative districts would continue to have one, but then within those districts, using this quotient, it would be subdivided into other districts. I think to be consistent you would have to call these representative districts.

MR. HARTNETT: I think if you divide them into new districts you are violating your traditional districts because you won't have 35 districts, you will have 45. Then you have lost your argument to the court as to why each district should have one.

MR. POPPITI: That doesn't necessarily follow.

MR. HARTNETT: If the court says why don't you combine your three lower districts and make it into one.

MR. POPPITI: They may well tell us that, but
263 remember, in our discussions here I thought we made it clear that if we started with the present 35 we would guarantee at least to those historical districts that they would have at least one with the opportunity to grow; but those that had already grown beyond this quotient that we would be using would get additional representatives.

MR. HARTNETT: I am not disputing that. I don't think it makes any difference what you call them. You can call them a sub-district of a district.

MR. O'DONNELL: You say it doesn't make any difference so long as we don't call them districts. That's what you are saying.

MR. POPPITTI: It makes a difference.

MR. HARTNETT: What's the difference?

MR. O'DONNELL: The difference is in growth.

MR. HARTNETT: That's right.

MR. O'DONNELL: We believe that when an area has this quotient, whatever it may be, it is entitled to a representative. You would graft them on in units of 15,000 to the whole, and you are growing within your representative districts individually. We are not making you grow as a whole because if we were, then we would wipe some of yours out right now.

MR. HARTNETT: That's right, and some of yours too.

MR. O'DONNELL: You wouldn't wipe ours out.

264 You would move them around, because we will have more under this system, no matter what you do. But you would be reduced if we moved yours around within it.

It seems to me that if we are going to have representative districts, if we are going to have the principle that a unit of population of 15,000 or major fraction thereof is entitled to a representative, then we have to have that principle and we can't say that in Kent County a representative represents a representative district, but in New Castle County we have a different system. You are sort of going back to a unit rule for New Castle County.

For instance, in Kent County if we followed you to a logical conclusion, we could just shift some of the 17,000 people from the Second District, which would soon be entitled to an additional representative if it has any growth. So that this same reasoning would apply to you.

MR. HARTNETT: The same reasoning would apply in that case. The Second District would be split into two divisions.

265 MR. O'DONNELL: But as our very large districts, 15,000, 30,000, 40,000 people reach the point where each of the subdivisions in that division has an additional 7,500 people, we feel they would be entitled to representation.

Now, the sooner, in my mind, that is done, the better. Another argument for it is that it will bring this whole picture into balance faster that way, because we would be adding my 7,500 by units.

MR. HARTNETT: You would be multiplying your additional representatives.

MR. O'DONNELL: But on the basis of population.

THE CHAIRMAN: I think perhaps the one distinction between what Mr. Poppiti and Mr. O'Donnell were saying on the one part, and what Mr. Hartnett is saying on the other part, is that under Mr. Hartnett's system the growth factor by which you would get an additional representative in the future would be a growth factor in the historic representative district as a whole.

Under yours it would be sort of a compound interest thing, if you broke them up into districts and each of those districts would have an independent growth factor which may result in compounding additional representatives in the future.

This is something that should be weighed in the point of view of whether or not it would be palatable to
266 Kent and Counties.

Each of the historic representative districts can tee off with the population factor in the beginning, and would have to evidence that growth within the historic district.

If you divide them into new districts, then each of those districts could compound it, and the added growth in the

rapidly growing areas could compound the number of future representatives that would come in.

MR. HARTNETT: Especially so when you have a major fraction.

THE CHAIRMAN: This is what I see as the major distinction.

MR. O'DONNELL: We are saying that if any district such as Brandywine, for example, were to be divided into four districts, it would take 7,500 people to get it over the 22,500 mark, and those 7,500 people would be entitled to a representative.

To my mind that is extremely logical and equitable when in your First District 6,084 people have a representative, and in the Third District 3,361 people have a representative, and so forth in the 3,700, 9,100, 2,600, 5,100, 4,900, and 4,900, plus one 7,800 classification. It seems to me to be absolutely logical for our 7,500 people to be represented by a person.

267 In fact, I think perhaps we are leaning over backwards to see that we have something accomplished here.

Now, you have one district with more than 10,000 people in it. You have all these districts I have just named where 3,700 people have a representative.

I do not see how Kent County in particular can object to 7,500 people getting a representative where you have the situations where 3,700, 3,300, 2,600 are getting a representative.

Now, true we have three districts that have less than 5,000, and we have five that have less than 10,000. So in part that reasoning is applicable to those. But out of your ten, you have nine that have less than ten. So that if your 3,700 people, and your 2,600 people are entitled to a representative, I don't see the logic that says our 7,500 people are not entitled to one, too, when these are on a population basis.

MR. HARTNETT: Our thought has been all along that from one to 15,000 people would get one representative. And from 15,000 to 30,000 you get two representatives.

MR. O'DONNELL: No, I beg your pardon. From 15,000 to 22,500. You get the second at 22,500.

MR. HARTNETT: Well, I have always disagreed with this idea of the major fraction, as you know. But just forget about it temporarily. Just for purposes of talking,
268 we will say 15,000 people for a quotient, and then you get a second representative at 30,000. If you had 30,000 population, you would still only have two representatives.

THE CHAIRMAN: Your compounding factor would amount to this under the proposal now coming from the gentlemen from New Castle County.

If you take an historic representative district, when it reaches 22,501 it would be divided, and if it were divided equally in the sense of a future growth factor, then you would have two representatives each representing 11,250, but with an equal growth factor when each of those had gotten 22,501, they would each be entitled to two. So that would mean that when the historic representative district itself had reached 45,000 under your system, they would have four. Under his system they would have three.

MR. HARTNETT: Well, I think we all understand the argument to that point. And, of course, the argument on the other point is that which I am sure we all understand, except Mr. Poppiti, who was not here, that it would affect the constitutional convention if we called them districts.

MR. O'DONNELL: We discussed that last night.

MR. POPPITI: Yes, I am aware of it.

THE CHAIRMAN: It was the only thing I was going
269 to point out, that unless you get back to Mr. Ernest Wilson's original idea, where he says that it will take place after the 1964 election, if a constitutional convention could be called, elected, and convened during the interim, and assuming that the same delegate strength would apply

on a representative district basis, this would be more palatable to the calling of a constitutional convention than one which provided for the immediate re-subdivision into other representative districts as is now proposed on the other hand before a constitutional convention could be called, elected, and convened.

Have I made that clear?

MR. O'DONNELL: I understand.

THE CHAIRMAN: It is a question of palatability again.

MR. O'DONNELL: I understand the reasoning.

THE CHAIRMAN: Now, please understand as far as I am personally concerned a constitutional convention called, elected, and convened on the old historic basis that is provided for in the existing Constitution to me is not only palatable, but I think it is something that I think is rather necessary.

On the other hand, I would find it extremely difficult to say that in my own mind one that would be called, elected, and convened after a redistricting would be at all palatable to Sussex County. Even though I, myself, think that
270 a constitutional convention, in my own mind, is necessary, my responsibility here is one of determining a plan which I feel would be acceptable and has some fair chance of having legislative approval.

MR. POPPITI: Well, of course, we may well conclude here that all we can accomplish is a solution to the immediate problem.

In our discussion in the main committee, there was a discussion with a view to having a constitutional convention because it was the general feeling that there were many other facets of our State Government that needed remedial action. But we may well conclude in our committee that all we can achieve is a prospective solution to the immediate problem, and may have to stop there.

THE CHAIRMAN: I think that is a fair statement.

MR. POPPITI: And that perhaps these other facets of our government that need correction may have to go

through this same procedure rather than through a general procedure which would obtain at a constitutional convention.

I would hate to see us deadlocked and not get beyond a solution which seems to have good prospects now because we can't perhaps come up with a broader solution.

THE CHAIRMAN: The only thing I have any great feeling about on the constitutional convention question is
271 the fact that I would like to see the people, acting through the constitutional delegates, have a say in this thing.

MR. POPPITI: I can see that, of course.

MR. E. S. WILSON: I feel that way, too.

MR. POPPITI: I understand.

THE CHAIRMAN: I think not only should the Court have a say in this, and the General Assembly, but I would like to see the people have something to say about this as directly as can be made possible.

MR. E. S. WILSON: And from a practical standpoint, I cannot see how these ten you are talking about could get in in time for a constitutional convention, because the constitutional convention would be passed on for the people to vote on in November.

MR. O'DONNELL: The referendum would be in November.

MR. E. S. WILSON: Then you elect in 1964 the delegates to the constitutional convention, and they do not convene until September of 1965.

THE CHAIRMAN: Well, you can retain the historic basis by substituting in place of your suggestion, the suggestion that redistricting not take place until after the election of 1964. Then the election would take place in 1964.

MR. HARTNETT: I sincerely believe that by 1965
272 there will be reapportionment in the House of Representatives, whether we do it by constitutional amendment, or the Court does it. I don't think the Court will wait until 1965.

THE CHAIRMAN: But will there be redistricting? This is the problem.

MR. HARTNETT: That is true.

THE CHAIRMAN: Or would they be elected at large?

MR. HARTNETT: But I think there are going to be additional representatives in the House after the 1964 election.

MR. O'DONNELL: If the Court should between now and September declare our constitutional amendment for the House of Respresentatives to be unconstitutional, then we would not like a two-legged amendment, or constitutional convention. All we need is a simple majority vote. Whether we could get that or not is a question.

THE CHAIRMAN: This is to my mind not a question of reapportionment. It is a question of when should the redistricting take place.

MR. HARNETT: I think you could make a strong argument to the Court if the constitutional amendment passes now, and then could be finally enacted in January. The Court might wait until January. But I don't think the Court is going to wait until 1965.

273 MR. KAVANAUGH: Unless you might have a built-in set of executing provisions, such as Mr. Ernest Wilson is speaking about.

MR. HARTNETT: No, you misunderstand what I am saying.

I say that in order to make the Court wait, I think there is going to have to be a constitutional amendment passed, I would say, next week. Otherwise it is my opinion that the Court would not wait, and would first declare our present constitutional provisions unconstitutional, and then would prescribe how it should be done. How, I don't know. Perhaps it would say the Legislature could do it by simple act.

MR. KAVANAUGH: And must do it by a certain date.

MR. HARTNETT: Yes, which was done in Maryland.

THE CHAIRMAN: Is it Michigan that says you must have it done by the 20th, or else it is an election at large?

MR. E. S. WILSON: Wisconsin. And now what they are trying to do is pass a joint resolution ignoring the Governor.

MR. O'DONNELL: I think they have already done it. I think they did it yesterday.

MR. HARTNETT: They did it once, and the Governor vetoed it. They did it again, and he vetoed it again. Now they are going to do it again.

MR. O'DONNELL: They didn't do it by resolution.

274 Now the question is, Can they do it by resolution to avoid the Governor's veto?

MR. E. S. WILSON: But the Michigan suggestion is senatorial distribution by population.

THE CHAIRMAN: That is right.

MR. E. S. WILSON: That is the difficulty in Maryland now.

THE CHAIRMAN: That is on appeal to the Court of Appeals in Maryland.

MR. POPPITI: Maurice, let me ask you a question. If we were just limiting ourselves to a consideration of the constitutional amendment, would you still have an objection to our forming new districts, preserving the historical districts as the basis, that is, preserving at least one vote to historical districts, to our forming new representative districts where the figures warranted such formation?

MR. HARTNETT: I would not object if the major fraction idea was eliminated. If it was strictly 15,000, I would have no objection.

MR. O'DONNELL: The other evening you and Harold Schmittinger were pretty close together in that line of thinking. Are you still pretty close together?

MR. HARTNETT: As far as I know. We were this

275 morning.

MR. O'DONNELL: So that we might not be too far afield if we concluded that his views were still as they were this morning?

MR. HARTNETT: That is right.

MR. O'DONNELL: We have not heard much from Sussex County on this matter.

MR. JOHNSON: Well, I have had a lot of calls, and the thinking seems to be along the lines of Harold Schmittinger's and Maurice Hartnett's suggestion. I am still of the feeling that we must come out of here agreed on both of these bills we are supposed to submit. I think if we come out divided, it won't be good for us.

If we eight cannot agree, how in the world can we expect the 35 and 17 to agree? If we can't get together, there is not much hope there, and then the Court is going to make the decision for us. That might be worse than what either of us would decide.

THE CHAIRMAN: Gentlemen, may I propose a compromise, to adopt your principle, but to apply it to an 18,000-factor? This would mean that when there has been 27,000 in a given representative district, it be split, each of those representatives representing 13,500. I understand the ideal for Delaware is 12,000-plus.

MR. POPPITI: Your quotient is 18,000?

THE CHAIRMAN: Yes. That would mean at 27,000, you would get a split. Divide that by 2, and each one would be representing 13,500. And I understand the ideal for Delaware is 12,000 per representative.

MR. O'DONNELL: Well, that 12,000 is just the present population divided by 35.

THE CHAIRMAN: Well, that is the only basis we have had to establish an ideal for the present and in the future.

MR. O'DONNELL: Well, I am quarreling with your language. "Ideal" to me means, "desirable." You are just using it as the mathematical result.

MR. E. S. WILSON: Yes.

MR. POPPITI: With an 18,000 quotient, has anyone computed how many additional representatives there would be?

THE CHAIRMAN: We had that worked out the other day.

MR. KAVANAUGH: Well, it would be somewhere between 10 and 6. We computed it on 20,000.

MR. POPPITTI: Was it 6 on 20,000?

THE CHAIRMAN: I think it was 7. We can do it very quickly, if you want to take your New Castle figures.

MR. E. S. WILSON: My objection to that is that
277 you are getting farther away from the 1,600 and the 27,000.

MR. POPPITI: Yes, the disparity is greater.

MR. E. S. WILSON: The disparity is increasing.

THE CHAIRMAN: Only up to the point of the split. After that your disparity would go right down to 13,500.

MR. POPPITI: Of course for physical reasons, this split that you envision could not come about. It might well be that in a given area you would have to preserve on district for that 15, or 18, whatever your quotient is, and set off the second district as a smaller district.

I could think of situations such as in Mill Creek Hundred, where I represent builders. If those areas grew, you pretty much have to set off one as the 15 or 18,000 people representative district, and permit the growth in an adjoining area, because if you split them one side would not grow. One side would not grow physically, because it might get backed up into an area where there couldn't be any growth.

THE CHAIRMAN: I know. But I would be assuming that for the purposes of discussion, at the very least if the committee that does this redistricting would do a good job, they should take into consideration growth factor, or else they they are doing a poor job.

MR. KAVANAUGH: Well, let me just by way of
278 clarifying my own thought processes say, as I understand it now, there are two things that we are talking about. This is the allocation of X number of additional representatives to New Castle County in order to attempt to equate a representation on a population basis.

The second thing is that we are dealing with 1960 census figures. It will not be until 1970 that we again have an official census which can be the basis for any readjustment,

reallocation, or redistricting, whatever you want to call it.

We do not have an official State census at any time in that decade.

THE CHAIRMAN: I agree.

MR. KAVANAUGH: Now, it seems to me we are overreaching ourselves in this area, if we do anything more than to provide for the immediate distribution of the X number of representatives for New Castle County on the basis of the 1960 census, because any projection figures that you use are not going to be official, and it will not be unitl 1970, at a time when the Commission which is called for in the proposed legislation will take over the responsibility of making this determination. And again it depends on how we write our proposed constitutional amendment as to whether we set a precedent for them to follow, which Mr. Hartnett is concerned about, and
279 which I think he has a legitimate concern, or whether they are going to act independently of anything that might be written into predetermined designations of supernumerary type of districts.

Now, to me what we are talking about in your supernumeraries is merely a stopgap measure to take effect as soon as it can be done, and only for so long as there is not another official dicennial census to use as a basis again for redistricting or reallocating whatever number of legislators for the Lower House are determined to be the fixed number, or an arbitrary number at any given time.

THE CHAIRMAN: Well, you understand what I am doing. This is merely a proposal that I am laying on the table, with an idea of trying to get unanimity among the members of the committee.

MR. KAVANAUGH: Yes.

THE CHAIRMAN: It is not a motion. It is just a suggestion, or an approach.

MR. KAVANAUGH: As far as I know, there is no motion before us.

MR. HARTNETT: There is one motion before us. Mr. Wilson's motion is before us.

MR. E. S. WILSON: I did not make a motion.

MR. HARTNETT: I thought you moved that additional representatives at large be elected at large in 1964.

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MR. E. S. WILSON: Well, if I did, I withdraw it.

MR. HARTNETT: Good.

MR. E. S. WILSON: We are not yet ready for a motion.

MR. HARTNETT: Well, Mr. Kavanaugh, you are saying the only plan we should work on will automatically end in 1970.

MR. KAVANAUGH: If what I understand to be the rest of the discussion so far is correct, that we are thinking in terms of a commission of three or five people who will redistrict, or reallocate every 10 years on the basis of an official Federal census.

MR. HARTNETT: But within the criteria we establish here, or a new criterion?

MR. KAVANAUGH: This is where I say the narrow point we have is the criteria to be used.

THE CHAIRMAN: That is right. And the implications of that criteria on the growth factors in the future.

MR. HARTNETT: Well, it makes a big difference whether we are talking about criteria we think are going to be permanent criteria of our constitution, or whether it is one we are only doing right now to take care of the problem until 1970.

MR. O'DONNELL: If it is adopted as a constitutional amendment, the committee could really operate

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within the framework of the constitutional amendment.

MR. HARTNETT: Quite right, unless the constitutional amendment says—

MR. O'DONNELL: That the criteria should be changed.

MR. KAVANAUGH: If we have concurrent legislation towards the constitutional amendment route, and the con-

stitutional convention route, I am perfectly agreeable to providing in the amendment to the constitution that anything that is in there with respect to increasing the number of representatives shall not in any manner affect the numerical designation of delegates, to wit, 41, in the other section of the constitution.

I think we can provide for that in the constitutional amendment, that it shall not affect another provision.

Perhaps if we could resolve that issue, we could take care of Mr. Hartnett's legal problem as to whether or not the question of increasing the number of representatives is going to have a legal effect on the other section which specifically calls for 41 delegates, and resolve some of our own doubts as to whether this should be left up in the air.

Now, what is the sentiment with respect to building into the constitutional amendment to Section 2, Article 2, a limitation or restriction that no other provision of the constitution will be affected?

282 In other words, I think if we express within the constitutional amendment itself the sense of the legislators in this particular amendment, I think the Courts would honor it.

MR. HARTNETT: Well, I think we would be much stronger with that in it, and I would certainly like to see a clause to that effect put in Article II, Section 2.

My own opinion as a lawyer is that might not necessarily be enough, because, as Frank O'Donnell stated last time, the rationale of Baker vs. Carr in and of itself might indicate that delegates to a constitutional convention would have to be elected on the basis of population. But I certainly think that we would be in a much stronger position to argue that the delegates to a constitutional convention would continue to be elected as they are now, and I would certainly concur in such a clause being put in there.

283 THE CHAIRMAN: Then this would leave only the question of the compounding factor.

MR. HARTNETT: Right.

MR. WILSON: I thought we had pretty well determined the 15,000 or major portion thereof before.

THE CHAIRMAN: That would be going back over old ground and I don't think it would be in order to review the whole picture.

MR. KAVANAUGH: We had a little side discussion back here. We were talking about the initial—

MR. POPPITI: About Wilmington, for example.

MR. KAVANAUGH: —split, if we could call it that, where you could carve a district which would have perhaps only 7,500 people in it for representative purposes. In that particular district it would have to grow until it reached 22,500 people before you would get another addition or another representative, before it would split again. If you preserve again the historical boundaries prescribed in the present Constitution for representative districts it is geographically and physically impossible for that type of growth to go on in one or more of the Wilmington representative districts which would be split in order to accommodate this particular adjustment.

THE CHAIRMAN: I have got another proposal which I will lay on the table, which would be this: that let
284 the growth factor—let the splits take place but let the growth factor apply to the historic representative district.

MR. O'DONNELL: As a whole.

THE CHAIRMAN: As a whole.

MR. O'DONNELL: I think you have got a mechanical problem there.

THE CHAIRMAN: You would still have your historic representative district and it would be a question of determining the growth factor.

MR. O'DONNELL: After the splits take place you don't have your historic district.

THE CHAIRMAN: Unless you preserve it for purposes of the growth factor.

MR. O'DONNELL: For instance in Brandywine Hundred you would have your first four on a split basis and that would result in four districts where there is now one and then you would say, "Henceforth for the next 75 or 100 people we will have that one running at large from the whole Hundred," so we would have a—

THE CHAIRMAN: No. The point I am saying is this: When the Committee has determined from the federal census that the growth factor in the entire historic representative district now entitles that district to five, then there would be a redistricting of the thing again from four to five.

285 MR. HARTNETT: What he is saying is that at the end of every census you would wipe out these subdivisions and start over again.

MR. POPPITI: This could be a real advantage. The point is this: In each of your subdivisions you would have enough growth and then if you pool their growth this would be a real advantage to the historic representative district.

THE CHAIRMAN: But you would lose this compounding factor.

MR. POPPITI: I think you would have a slower growth and a slower increase if you would apply this factor to the initial subdivision. For example, if you subdivided Brandywine Hundred into five districts and each of those districts had to grow by 7,501 before they would get one more representative, if we used your formula, each of them could increase by 1,501 and that would give them an additional representative.

THE CHAIRMAN: Let me go back to the formula I gave you in the beginning. The formula I gave you in the beginning: Let us take a representative district which is now entitled to one because it is under 15,000. It gets to 22,501 and then it is split into two. That would mean if it was split on an equal population basis and with an equal growth factor that each representative in the split districts would

be representing 22,501, at which time the old historic
286 representative district would be entitled to four because each of the two segments had grown to the point that it was again entitled to a split, so you get back to the historic. But that would mean 45,000, and the old historic representative district under the split system would be entitled to four. However, if you applied the growth factor to the entire district, 45,000 would entitle it to three. So at that particular point, you see, the old historic district, regardless of its internal subdivision, would have three under the growth factor applying to the whole district and would have four if the growth factor applied to the splits. This is the difference between the two. This is why I laid out the suggestion. This is why I am laying down this suggestion.

MR. KAVANAUGH: It is an excellent idea, Houston, for a mechanical redistribution on a periodic or every-ten-year basis. I think, however, that if you build into your system a separate commission which will be charged with the responsibility for redistricting then they should have some discretion. They wouldn't have any under this type of mechanical subdivision.

THE CHAIRMAN: Oh, yes. They would take that district, when it had reached 22,500 and they would split it in two.

MR. KAVANAUGH: At that point in my thinking that would be 11,250.

MR. POPPITTI: For each district.

THE CHAIRMAN: Correct.

287 MR. KAVANAUGH: For each division.

THE CHAIRMAN: Now, then, when it reached 37,501—

MR. O'DONNELL: It would be entitled to three.

THE CHAIRMAN: —it would be entitled to three.

MR. HARTNETT: What you are saying is that every ten years they would go back and look at the original historic districts and say, based on the formula, "You are entitled to 'x' number of representatives," and then they would redraw the—

THE CHAIRMAN: —the entire historic representative district into the new number of new representative districts that it was entitled to. Under their system, with these figures I have used, they would redraw it into four. Under the system that I am suggesting as a proposed compromise they would redraw it into three.

MR. O'DONNELL: It depends upon how the growth came.

THE CHAIRMAN: But the growth would be in the historic representative district.

MR. POPPITI: The only thing about that is that within ten years if a particular district had grown to say 7,000 and was 501 short of acquiring another representative when the dicennial census came out then you would lump them all together and that growth would be wiped out and they would start all over again. In effect, their 7,000 would be pooled with the growth within the historic district.

288 THE CHAIRMAN: That is right. In other words, my theory is this: If the Committee does a good job of subdividing it would necessarily have to consider the future growth factor as well as the future population. If at the end of ten years they misguessed on the growth factor they would go back and resubdivide it into three and again would have a second shot at the fair growth factor.

MR. WILSON: It penalizes new districts.

THE CHAIRMAN: I am trying to find a common meeting ground.

MR. WILSON: You can't tell how it would work. It depends on how the situation is in the ten-year periods. It might be more one way than it is the other.

THE CHAIRMAN: This is getting to be more and more of a science and I assume the Committee will avail itself of this scientific ability and if there was a misguess they would have an opportunity to review it every ten years and take another educated guess.

MR. WILSON: I don't think it is a major point one way or the other.

THE CHAIRMAN: Where it is major is only in the question of palatability to the General Assembly.

MR. POPPITI: As I see it now, in a broad general area—and let us take Brandywine Hundred, which is perhaps the most outstanding example—we only have one representative and under this system we would have four. At least every dicennial census if there were a growth it could be pooled and in that new growth area of representation you know at least that there would be an increase.

MR. WILSON: An increase of one or two.

MR. POPPITI: Of one or two. So I think it does have merit from that standpoint.

THE CHAIRMAN: It is a question of trying to cast about to resolve this thing.

MR. WILSON: Whereas, as a matter of fact, if you divided them into four, in 1970 none of the four might have reached that point.

THE CHAIRMAN: There is one other proposal that I have on this. There is always a temptation, whether it is resisted or not, on the part of any committee that does redistricting to do a little gerrymandering and this would review and possibly eliminate the gerrymandering or may throw it the other way.

MR. HARTNETT: That is a point.

THE CHAIRMAN: This is the point that impressed me.

MR. HARTNETT: The gerrymandering wouldn't last forever.

THE CHAIRMAN: No. You wouldn't be stuck with a gerrymandering that would last forever because you know the Committee would review that from that point of view and gerrymandering is something that is done and it is not a good practice.

MR. KAVANAUGH: The only trouble I have with that is that in preserving the historical representative districts, almost making them sacrosanct, I can understand and readily appreciate that it is mechanically feasible and

palatable and an easily-administered criterion or standard that comes within our initial concept of a rational standard that we talked about earlier in our first meetings. My own thinking on this whole subject, though, involves reapportionment and redistricting on a federal census basis across the board rather than just in the narrow confines of an historic representative district, wherever it may be located throughout the state.

MR. HARTNETT: I see your point and I think eventually sometime, some day it is true, the entire State of Delaware will have to be redistricted completely and totally, but I don't think we have gotten that far yet.

MR. WILSON: We might be closer to it than you think.

MR. HARTNETT: We hope we haven't gotten that far yet. Our thought has been so far that we would maintain them. I can see where, as I have said once before, the General Assembly would reach such a size that there would have to be a re-evaluation of this whole concept in order to keep the General Assembly — the size of the General
291 Assembly within bounds. Then it might be necessary to change the quotient and consequently change all the district boundaries, but until such time as the General Assembly reaches a size which is unmanageable then I think this formula would probably be as fair as any.

THE CHAIRMAN: Of course, this is one of my bases for feeling that I would rather see the redistricting, which is inevitable, done by a constitutional convention which is at least a little bit more remote from the political arena than being done by the General Assembly. I don't think that we should or could reasonably ask this General Assembly to start doing some redistricting. We would be presenting something to them they would never never solve.

MR. HARTNETT: I don't think that this Committee could redistrict the State within the next week. I know the General Assembly could do it. We could do it but it would just be close your eyes and—

THE CHAIRMAN: But the General Assembly would never take anything that we said. I am sure of that. Because that is so purely political that I couldn't feel that we would be doing anything but wasting our time.

MR. KAVANAUGH: Echoing your sentiments, Mr. Chairman, I would like to restate them along the lines again of a companion legislation, one along the lines of the Constitutional amendment of Article II, Section 2, and the
292 Constitutional convention, for these very reasons that have been under discussion here. We are now in our third session and we have not been able to resolve our own thinking, even on a purely philosophical plane, as to how to approach this subject. I think this is an issue which is critical for any constitutional convention. I think the Legislature is too close to it. From a selfish self-interest standpoint they would have more of a problem certainly than we are faced with now. As far as the amendment to the Constitution is concerned, I think we need it immediately as a stopgap measure and I like what has been talked about earlier, without getting into the niceties of how re-districting will be done in '66 or '68, because I would like to see a Constitutional call which would take place in September of 1965.

THE CHAIRMAN: Well, sir, this is my fundamental reason the last time for having cast a vote against so-called re-districting in any phase and having them elected at large, period, and then as a companion to that have a Constitutional convention, which I would anticipate would have to hit this redistricting problem and we would just stay off it entirely and just say the tentative basis to do something in good faith, which the court we hope will accept, is action in good faith to let them them be elected at large, period; to say nothing about redistricting. And then as a companion to that have a Constitutional convention which we could say in our report would attack the problem of
298 redistricting, as remote a position from partisan politics as could be done. This is the basis of my voting that way.

This also would get us away from this compounding factor, as far as the work of this Committee is concerned, and leave that again to the Constitutional convention. This would seem to me to eliminate the elements that seem to divide us in our discussions, at least at the present time.

MR. HARTNETT: I think we are getting ahead of ourselves again. I think we are going to have to resolve this question of how we are going to divide the present representative districts of New Castle County.

THE CHAIRMAN: Would you go for letting them be elected at large, period?

MR. KAVANAUGH: Within the historic—

THE CHAIRMAN: Within the present historic districts, period.

MR. WILSON: Provided you have a Constitutional convention?

THE CHAIRMAN: Of course, all of us would reserve our look at the whole plan. In other words, if ultimately this Committee did not go for a Constitutional convention then I would assume from your points of view when you exercise your reservation of looking at the whole plan you would say "no soap" on the whole plan. We have got to
294 go back over it again if we don't get a Constitutional convention as a companion to this.

MR. O'DONNELL: No. I won't say that.

MR. KAVANAUGH: As far as at-large elections are concerned, I don't know of anyone who is on record more frequently and more often than I am with respect to the invidiousness of at-large elections insofar as it pertains to the City of Wilmington. I am perfectly agreeable to a plan which would call for at-large elections for the supernumeraries of the historical representative districts insofar as they pertain to Wilmington and obviously insofar as they pertain to rural New Castle County, if it is done for not more than two general elections, namely, 1962 and 1964, and further provided that there is an immediate call for a Constitutional convention which can take place

no later than September of 1965, at which time this whole issue of Article II, Section 2 will be considered de novo.

I can't put my views or feelings or sentiments or words in any more succinct language than that and if you can transcribe it I would like to have it repeated every ten minutes.

MR. O'DONNELL: Just to summarize so we don't waste any more time on this, I can't be as agreeable as Mr. Kavanaugh and I would not vote for at-large elections at any time.

THE CHAIRMAN: Even for one?

MR. O'DONNELL: Even for one. If that is what I was in favor of I would have just let the court go on
295 with their possibly ordering the same and not have spent my time on this subject. I believe that we should decide on a system of redistricting, recommend it to the overall Committee, and let the proper legislative committee work out the details as to how the line shall be drawn for these new districts. I also believe that once these districts are created that the inhabitants of these districts stand on the same plane and have the same rights as the inhabitants of any of the present districts in Kent County.

I am willing to recognize your districts in Sussex County, by the way. I am willing to recognize your districts now. I am not asking that you give up your historic representation in each of these districts. If each of those districts has a representative—I can see in Sussex County, in many of your counties you are getting up there in population. Your tenth has 12,359; your first has 98; your third has 94; some have 88,000. I can got along with maintaining those, but I think that from this moment forward ours should be on an equal status with yours and I think that any growth that you have over 15,000 should be recognized and that any growth that any one of our districts has over 15,000 should be recognized.

The system which I am willing to go along with has from the beginning certain inequalities. Based upon a mathematical ratio, Kent County should have 150,000
296 people to justify 15 representatives and it has 66,000. So that you are getting a tremendous advantage or you are getting a tremendous bonus momentarily from this Committee, if I may say so, if the plan we had discussed should be adopted. Sussex County has 76,000 people and they are getting enough representatives that would justify a figure of 150,000 people.

So that I can't see why, with the tremendous advantage you are getting, as I see it, you believe that it would be inequitable to redistrict our growth, which we are only asking for growth based upon actual growth. You are getting representation now based on people that you don't presently have and you might not have, based upon your historic growth, for some time.

As a compromise I am willing to go along with the status quo for your present districts but I think that you should go along with us and recognize our future growth which we claim we may have. If we don't have it we wouldn't pick up any additional representatives. We are only asking for representation for people who might be in being in the future. If for reasons unknown to me Brandywine Hundred stops growing, and it might, Christiana Hundred, then we might not get any additional representation there. But if we have additional people then I believe that our additional people would be entitled to representation.
297 You are starting out with tremendous representation for people you don't presently have and we are asking in exchange for that—not really in exchange for it but as a companion to it that we be given representation for people who may exist in the future and we are asking it only if those people come into being and are there and are counted in the general census in the future. I personally feel that if this is going to be adopted by a majority vote

of the legislature after the court speaks, I feel it should be along those lines. If it is a Constitutional amendment I feel it should be along those lines. I think it should be palatable to your people because you are getting quite generous representation and you are getting your geographic representation in the Senate.

So that we would have 25 people representing 350,000 people and you would have 10 people representing 66,000 people or 76,000 people. So I am afraid that my position on this thing, after thinking about it and after meeting with some of our people and meeting privately with some others, is that we just have to—at least I do—insist on representation based upon—

THE CHAIRMAN: Let me say this: Your present thoughts on the subject are not too far apart. I think that Sussex County can be persuaded to accept—this is my belief. I may be wrong.—will be willing to accept a 15,000 growth factor. However, when it is clearly explained that
298 under the proposed redistricting there is a gimmick in this and the gimmick is that there will be a compounding growth factor through your proposed redistricting.

MR. O'DONNELL: Not really. Only based on people. There is no gimmick. We don't ask for any representation on people that won't exist.

THE CHAIRMAN: Let me just finish. What I am trying to say to you is how I think that Sussex County will look at it because you know they have been viewing this thing on a growth factor basis. This has been the publicity. This redistricting with a compounding growth factor is not clearly understood and of course it must be clearly explained and understood by them and this is one thing that concerns me.

We are only apart in this: whether the growth factor shall apply to the historic representative districts as a whole rather than to the new districts or subdivided districts. Let me again say this: If the growth factor is

limited to the historic representative districts that will apply equally throughout the State and, by the same token, if Sussex County took a sudden growth or if an area such as Dover in Kent County took a sudden growth, its number of representatives, based on the growth factor, would be equated with yours. They would still have to retain their historic representative districts. So in this sense of the word retaining the historic representative
299 districts for the application of the growth factor would apply equally to our potential as it would apply to your potential. And so there is nothing inequitable about this, in my mind.

Second, let me say this: that this would give a chance for the redistricting committee to take another look at this thing every ten years and if they have misjudged a subdividing for the past ten years on how the growth developed this gives them a chance to review it in the light of new information. Third, if any redistricting committee should yield to the temptation of gerrymandering after one census then every ten years the possibility of eliminating that gerrymandering and wiping out that temptation to which they bowed would be afforded another redistricting committee.

It is for these three reasons that I think that this is a common meeting ground where we can get together and I would be perfectly willing myself to meet you on this particular ground and then let the Constitutional convention stand on its own feet and decide that later.

MR. POPPITI: I think your approach is a logical outgrowth of our initial premise to preserve the representation for the historical representative districts because if we start with that major premise then it would seem that your proposition and your suggestion would follow: namely, that within that representative district,
300 when it achieved a population of 15,000 or the next major fraction it would be entitled to an additional representative. Then if you said that after each federal

dicennial census you would re-examine each of the districts, then, in effect, you would not be penalizing growth in the original subdivided districts.

THE CHAIRMAN: This is what the federal system is as far as the House of Congress. They redistrict the entire state. This is another factor. This would be following the federal precedent, which I think should have some appeal to the court.

MR. POPPITI: I think it has merit. I think the New Castle County delegation might want a caucus after a little recess because it is a new approach to the problem.

THE CHAIRMAN: Gentlemen, it is almost six o'clock. We can very shortly recess for dinner. This will give you a chance to think this over. Do you want to recess now, gentlemen?

MR. WILSON: Let us recess now and go down and eat.

THE CHAIRMAN: We will recess for dinner at the present time. I think we clearly understand the problem and I don't see that any further discussion is going to help us very much unless we come up with some new ideas.

(At this point the meeting recessed for dinner.)

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301 (The meeting reconvened at 7:30 p.m.)

THE CHAIRMAN: Let us report another agreement. We will let Kent County report on their division.

MR. SCHMITTINGER: We have agreed on the same kind of division that Sussex has, an east-west division. Unfortunately, the representative districts are numbered differently so it doesn't look like it is similar, but it is an east-west division and it would be for the Sixth at-large. It would be the First, Second, Fifth, Seventh and Eighth Representative Districts, and then the number Seventh at-large would be the Third, Fourth, Sixth, Ninth and Tenth.

THE CHAIRMAN: Do you propose the identical resolution for Kent County with these numbers as was proposed for Sussex?

MR. SCHMITTINGER: I do.

THE CHAIRMAN: Do I hear a second?

MR. HARTNETT: I second it.

THE CHAIRMAN: Any discussion? If not, all those in favor signify by raising their right hands? Contrary? It is unanimous.

Was there something left dangling on that that would tie in to both of them or did we get that in?

MR. HARTNETT: You got that in already.

THE CHAIRMAN: I guess we are waiting for New Castle County to tell us how they feel about my proposed
302 compromise that was laid on the table.

MR. O'DONNELL: As I understand it, at least the four of us are in agreement with our understanding of the proposed compromise, which, as I understand it, is that each of our representative districts where more than 15,000 people reside will be divided into as many representative districts as are required to bring it as close to a 15,000 population as possible and that in the future—and this is where we accede to one of your thoughts—that in the next dicennial after the—after the next dicennial federal census that the present representative districts will again be subdivided into as many representative districts as may be required, using 15,000 or major fraction thereof as a quotient as applied to the present representative districts. That is contrasted with your previous position where we were applying the reapportionment to each new representative district. We are acceding to your thoughts. Each historical hundred will be analyzed after each dicennial census and divided into as many representative districts as are required by a quotient of 15,000 or major fraction thereof.

THE CHAIRMAN: You have caught my own understanding of the proposal as I made it.

MR. POPPITI: I suppose the only prefatory remarks he might have made are that we as a Committee are now pre-

serving the historical representative districts as the
303 units from which to determine—

THE CHAIRMAN: To which to apply the quotient.

MR. POPPITI: That is correct.

THE CHAIRMAN: And this applies throughout the entire state.

MR. POPPITI: The entire state; that is correct.

THE CHAIRMAN: And that is the only purpose for which they are being retained.

MR. POPPITI: And that this would be reviewed after each federal dicennial census.

MR. O'DONNELL: It is my recommendation, which I have not discussed with anyone else, that for example in Brandywine Hundred after this job is accomplished, we would have the First Representative District of Brandywine Hundred of New Castle County, the Second Representative District of Brandywine Hundred of New Castle County, et cetera. Then in 1970, if the population of Brandywine Hundred has gone up to 67,501, for example, we would then have five representative districts of Brandywine Hundred, numbered consecutively, beginning with 1.

THE CHAIRMAN: Do you propose as soon as the Constitutional amendment becomes effective that the Constitutional Reapportionment Committee shall immediately apply it throughout the entire state for the 1964 election?

MR. POPPITI: I would think so.

304 MR. WILSON: Yes.

MR. POPPITI: This is contrasted with your former position.

MR. WILSON: Yes, with my former position.

THE CHAIRMAN: In other words, this would provide for a reapportionment committee by Constitutional amendment and that committee would act at once throughout the state—

MR. POPPITI: To implement the Constitutional amendment.

THE CHAIRMAN: For the '64 election and thereafter every dicennial. I am not putting words in your mouth.

MR. O'DONNELL: This is a time element. I would have preferred that legislation to be introduced to amend the Constitution now, spell out the present bounds of the new districts, the new bounds and the Committee do it in the future so that the new districts could be described in the new legislation.

THE CHAIRMAN: In other words, we would go into redistricting right now.

MR. O'DONNELL: Not "we." If the major Committee approves.

MR. WILSON: I don't think even the major Committee can do it in time.

MR. SCHMITTINGER: Why does it have to be done that soon, Frank?

THE CHAIRMAN: This is just a suggestion: that
305 the Reapportionment Committee provided for in the Constitutional convention start to operate at once to do it.

MR. POPPITI: Of course, there might be a question that none of us has examined. Would it be constitutional to amend the Constitution to then delegate the original districting to a redistricting committee? I don't know. I haven't thought that through.

MR. HARTNETT: A lot of state constitutions delegate to—

MR. POPPITI: Do you follow me?

THE CHAIRMAN: Yes.

MR. KAVANAUGH: I think you can provide that it will be done by legislation by the statutory route. I think it can be done constitutionally.

THE CHAIRMAN: In other words, what you would be empowering them to do, you would be preserving the historic representative districts. You would be empowering them to apply the population quotient within the district to reapportion and to redistrict the historic districts.

MR. WILSON: I would prefer that to be done by a reapportionment committee rather than try to do it between—

THE CHAIRMAN: This would avoid a lot of argument in the legislature, I think.

MR. WILSON: Yes.

THE CHAIRMAN: Has anyone else any thoughts on that?

306 MR. KAVANAUGH: This would be in a sense a constitutional or a legislative commission. In other words, it would be provided for expressly in the Constitutional provision.

THE CHAIRMAN: Yes; who the committee would be.

MR. WILSON: Who the committee would be, yes.

MR. O'DONNELL: As in some of the bills, such as Mr. Wilson had here the other day.

THE CHAIRMAN: The five-man committee, the three-man committee.

MR. WILSON: The Governor, the Attorney General and the Chief Justice. Another one is the Governor, the President of the University, the President of the Farmers Bank and the leaders of the two political parties, I believe.

MR. POPPITI: And as a practical matter, this committee can't function until after the '62 election anyhow because the first leg presumably would be voted on now, so the political complexion of that committee is subject to this election, anyhow.

MR. KAVANAUGH: It is up to the electorate.

THE CHAIRMAN: It wouldn't even be in being until after the Constitutional amendment.

MR. KAVANAUGH: By way of further extension of those remarks, conceivably it would only function for the 1964 election, on the theory again, just speaking by way of extension of remarks, that the Constitutional convention is convened in September, 1965, and is able to come
307 up with something for the '66 election.

MR. POPPITI: That is possibly right, yes.

MR. KAVANAUGH: This is a possibility.

MR. POPPITI: They may elect to go another route for the whole process.

THE CHAIRMAN: One other question before we get to the Constitutional convention. Do you want this amendment to provide that any such redistricting of the historic representative districts will not affect the apportionment of the delegates or the number of delegates to any Constitutional convention, pursuant to the Constitutional convention clause of the Constitution?

MR. POPPITI: Yes. This is our feeling, too, because we are very anxious to have a Constitutional convention and it is the feeling of our northern delegation that we would "take our chances" in a Constitutional convention constituted as presently set out in the Constitution.

THE CHAIRMAN: This was the thinking of let me say not all of the representatives from Sussex County but it at least was vocally expressed by a number of them who were at the meeting that they would take their chances on the Constitutional convention with the existing. They thought they could out-talk you from New Castle County. I think this will probably be made known to the legislature, that this chance exists, but we are not here
308 to weigh or assess that. We are here to weigh or assess what the court is going to do about the General Assembly.

MR. WILSON: Could we discuss then the composition of the reapportionment committee?

MR. HARTNETT: Let us take one step at a time.

MR. O'DONNELL: We haven't adopted this.

THE CHAIRMAN: Does anyone from New Castle County want to try to phrase this resolution for us? This is just for the Secretary's minutes. Do you want to undertake it, Frank?

MR. O'DONNELL: "RESOLVED: that all representative districts in all counties shall be apportioned on the following basis: that any of the present 35 representative dis-

tricts having a population greater than 15,000 shall be divided into representative districts which shall be known as the 'First,' 'Second,' et cetera representative districts of the hundred in which they are located and for each additional 15,000 population or major fraction thereof additional representative districts shall be established."

MR. POPPITI: For this purpose don't you want us to agree on a resolution embodying the principles to which we are going to apply and then somebody be instructed to draft the Constitutional amendment?

MR. O'DONNELL: That is what I was trying to do. I wasn't trying to draft the statute now.

309 MR. SCHMITTINGER: One thought on that is that some of our representative districts aren't hundreds. We have parts of hundreds. I guess the City of Wilmington is the same way.

MR. O'DONNELL: That's right.

THE CHAIRMAN: We have to distinguish them by historic representative districts as opposed to the use of the word "hundreds."

MR. O'DONNELL: Otherwise, was it right?

MR. POPPITI: Yes, I think so.

MR. HARTNETT: I could read this whole thing. Do you want me to read this whole one big paragraph?

MR. O'DONNELL: No, because it incorporates the parts we adopted the other evening.

THE CHAIRMAN: May I take a crack at this?

MR. O'DONNELL: How did you write it down?

MR. HARTNETT: I just wrote this whole paragraph.

MR. O'DONNELL: I have it done on a fractional basis.

MR. HARTNETT: "Upon any representative district being entitled to more than one representative, the representative district as now set forth in this Constitution shall be subdivided into a representative district for each new representative and there shall be a representative district for each representative, from which shall be chosen

by the qualified electors of the representative district
310 a representative. After each official dicennial federal census the new representative districts created as a result of the application of the quotient shall be abolished and the representative districts as now set forth in this Constitution shall be redivided as set forth herein.''

Is that what we have in mind?

MR. O'DONNELL: It sounds pretty close.

MR. KAVANAUGH: Except that it injects still another possibility and that is where you get a dilution of your population. We are thinking now in terms you know of increases in population, but as you have worded this—

MR. HARTNETT: It wouldn't make any difference.

MR. KAVANAUGH: Yes, it would.

THE CHAIRMAN: You would go back to one.

MR. KAVANAUGH: That's right.

THE CHAIRMAN: This would be right.

MR. POPPITI: Sure, because basically haven't we decided that we are going to use the 35 historic representative districts? Each district shall be entitled to at least one vote but, applying a quotient of 15,000, each district shall be entitled to such additional representatives as shall be represented by dividing the total population after each dicennial census by 15,000 or a major fraction thereof. Isn't that what we have agreed on in principle?

THE CHAIRMAN: Yes.

311 MR. POPPITI: Somebody has to draft this into a Constitutional amendment. Can't we have a vote on that, on these principles which we have agreed on?

THE CHAIRMAN: Yes. I think the record is clear on the principles we have agreed on and somebody move that we adopt these principles.

MR. POPPITI: I so move.

MR. KAVANAUGH: Seconded.

THE CHAIRMAN: All those—any further discussion? If

not, all those in favor signify by raising their right hands. It is unanimous.

(Discussion off the record.)

MR. POPPITI: We have agreed on seven Senators from each county, on a geographic basis; we have agreed to preserve the historic senatorial districts in New Castle County; we have agreed to preserve the historic senatorial districts in Kent and Sussex Counties and have set up two additional districts in each county on a geographical basis. We have then agreed to preserve the historical 35 representative districts, giving them a minimum of one vote per district; we have set up a quotient of 15,000 or major fraction thereof as the determining factor for each additional representative and we have further indicated that this is to be reviewed after each federal dicennial census.

THE CHAIRMAN: To be reviewed first immediately after the Constitutional amendment becomes effective and thereafter following each dicennial federal census.

MR. POPPITI: That's right.

THE CHAIRMAN: We have also agreed that this will not affect a Constitutional convention.

MR. POPPITI: And that after each dicennial census each historic representative district shall be re-examined and be redistricted accordingly, whether there be an increase or decrease in population.

THE CHAIRMAN: And we have agreed that this amendment will not affect the—

MR. POPPITI: Put it positively, Houston. Why don't you say positively it is the agreement here that the delegates presently provided in our Constitution for a Constitutional convention shall remain the basis for a Constitutional convention.

THE CHAIRMAN: Right.

MR. SCHMITTINGER: Isn't the only thing remaining then the question of who is going to redistrict? Whether is it

going to be a committee or a commission or the legislature, and so forth?

THE CHAIRMAN: We have also agreed that the first Senators to be elected from the newly constituted senatorial districts in both Kent and Sussex Counties, those coming from the Sixth shall be for two years and thereafter four years and those from the Seventh shall
313 be for four years and continuing.

MR. KAVANAUGH: Does the language of that Section 6 help you with respect to your delegates?

THE CHAIRMAN: Yes, for purposes of substance. We have agreed that nothing contained in this foregoing plan shall be construed to affect the number and composition of delegates to a Constitutional convention provided in Article VI, Section 2, being expressly understood that there shall be 41 delegates allocated as therein provided.

Are we agreed on the substance of the review to date? If so, we will continue on to the question of a reapportionment committee and its composition.

MR. WILSON: I have two bills here, one of which suggests a reapportionment commission of five members, consisting of the Governor, the Senate majority leader, the Senate minority leader, the President of the University of Delaware and the President of the Farmers Bank of the State of Delaware.

I have another one here in which the proposal is that there be apportionment by the Governor, the Attorney General and the Chief Justice of the State Supreme Court. The Governor shall act as Chairman of the reapportionment commission and the commission shall fix its own rules and procedure.

THE CHAIRMAN: What is that first one again?

MR. WILSON: The first one is a reapportionment
314 commission of five members consisting of the Governor, the Senate majority leader, the Senate minority leader, the President of the University of Delaware and the President of the Farmers Bank of the State of Dela-

ware. The Governor shall act as Chairman of the reapportionment commission and the commission shall fix its own rules and procedure.

THE CHAIRMAN: That is the Senate minority and majority leaders?

MR. WILSON: The Senate majority and minority leaders.

THE CHAIRMAN: What do you think of the president pro tem and the Speaker of the House? Somebody in the House is going to get indignant.

MR. WILSON: Then you might have all of one party.

MR. POPPITI: I would rather see a combination of these two plans.

THE CHAIRMAN: I would like to see the Chief Justice in place of the President of the Farmers Bank. I don't see where he has anything to do with this.

MR. POPPITI: Very good. You read our minds on that.

MR. HARTNETT: My only objection to the Chief Justice would be, are we going to provide a method of appeal and, if so, it would be I would think to the Delaware Supreme Court.

MR. O'DONELL: There is a line of decisions which our Chief Justice and the members of the Supreme
315 Court are acquainted with and are quite in sympathy with that restricts the duties that can be put on the judiciary and they are unhappy about additional nonjudicial duties. There are nonjudicial duties which they don't want and which I feel they shouldn't have. I feel this is one they shouldn't have.

MR. POPPITI: I would like to suggest a reapportionment commission consisting of the Governor as a Chairman, the president pro tem of the Senate, the Speaker of the House, and the Chairman of each major political party.

MR. O'DONNELL: How about the Governor, the majority leader, the minority leader. I think it ought to be bipartisan?

MR. WILSON: So do I.

MR. O'DONNELL: The Governor, the majority leader, the minority leader—

THE CHAIRMAN: Of which house?

MR. O'DONNELL: Of both houses. That would give you five.

MR. HARTNETT: I personally am against putting on the majority and minority leaders of the house because I have seen some of the men who have been majority leaders; not at the present time and not within the last few years. However, I don't think these men by training are suited for this type of job.

MR. O'DONNELL: That is what they have legislative attorneys for.

316

MR. HARTNETT: I would prefer to see—give the right to the chairman of each political party to appoint one or two persons to represent that political party.

MR. O'DONNELL: There you get into another delegation, the constitutionality of which might be in question.

MR. HARTNETT: That is true.

MR. O'DONNELL: I think the delegation of authority has been the source of considerable difficulty.

MR. KAVANAUGH: Just for discussion, is there a need to discuss the majority and minority leaders of the Senate since we are talking about reapportioning only the House?

MR. HARTNETT: I agree there. It probably should be confined to the House.

THE CHAIRMAN: You thought, didn't you, that the House was the patient and these were the doctors?

MR. HARTNETT: Of course that is true. It might be better not to have your own self-interests.

MR. KAVANAUGH: What you are doing is you are working yourself back to the three-man commission of the Governor as Chairman, the Attorney General as one of three members and the Chief Justice of the State Supreme Court. I personally feel that I would rather not add to the duties of the Chief Justice of the Supreme Court by

317 giving him a Constitutional appointment to such a committee. I think we ought all to agree on the Governor serving as the Chairman of the committee and proceed from there, Mr. Chairman.

THE CHAIRMAN: All right. Let us take them one at a time. The Governor is agreed upon. I won't call for a vote on that. Let us take the Attorney General. Do we want him on it? Let us discuss the Attorney General now.

MR. HARTNETT: You have got to keep this as bipartisan as you can.

318 THE CHAIRMAN: Do we agree in principle that there ought to be two representatives of each of the two major political parties?

MR. O'DONNELL: At least two. Would it be easier if we started as to how many people do we need?

MR. WILSON: Maybe you only need three.

MR. POPPITI: Why not the Governor and the chairman of each major political party?

MR. SCHMITTINGER: Or their nominee.

MR. POPPITI: No, I don't think we had better have the nominee. We have had trouble with that.

MR. O'DONNELL: We have had at least one Election Department case where the power to name the members was delegated. I would rather stay away from this delegation.

THE CHAIRMAN: You think he ought to be an official.

MR. SCHMITTINGER: The Governor and the chairman of each of the two major parties. Let's leave it at that.

THE CHAIRMAN: It's a factual thing. Of course, the redistricting itself is not factual. That is quasi-political.

MR. POPPITI: This is where we might live with gerrymandering for four elections. This is the only danger if we have the two chairmen and the Governor; it will be a 2 to 1 vote.

MR. WILSON: Wouldn't it be better to have two
319 people from the Senate, the Senate majority leader and the minority leader?

THE CHAIRMAN: That would be the president pro tem and the minority leader.

MR. KAVANAUGH: Put yourself in the place of the president of a house of representatives. They don't want the Senate telling them what to do.

MR. SCHMITTINGER: Mr. Chairman, one of these bills, No. 361, which you have all probably read, spells out the standards that this commission must apply:

1. Each district shall be formed of contiguous territory and shall be as compact an area as possible.

THE CHAIRMAN: That is the gerrymandering thing.

MR. SCHMITTINGER: I think we could get around that if we spell out the standards.

MR. HARTNETT: It would help.

MR. O'DONNELL: Within any phraseology there is certain room.

MR. POPPITI: This has its limitations too, Frank. There are certain built-in limitations.

MR. WILSON: You would rather have the political party chairman?

MR. O'DONNELL: I originally had thought that
320 perhaps it would be advisable to have the Senate do this, but it seems to me that—could we go off the record, Mr. Chairman?

THE CHAIRMAN: Yes.

(Discussion off the record.)

MR. POPPITI: Should we have three or five people?

THE CHAIRMAN: I am inclined to five on the theory that two heads are better than one.

MR. POPPITI: If there has got to be five, we are agreed on one. We agree that the Governor should be the head.

MR. KAVANAUGH: If you are going to five, I would buy the incumbent chairmen of the two major political parties as they exist in the state at that time.

MR. POPPITI: Now then, we need two others. Who shall they be?

MR. O'DONNELL: I haven't done too much research on this.

MR. KAVANAUGH: Could we agree that it would not be the Chief Justice of the Supreme Court?

THE CHAIRMAN: I think so.

MR. POPPITI: I don't think it ought to be the Attorney General, either. They ought to be left out because there may be appeals.

MR. SCHMITTINGER: What's the objection to having Superior Court judges?

321 MR. POPPITI: For the reason that Frank suggested. They would like to stay away from these political jobs.

MR. SCHMITTINGER: But I think the impartiality there would be as sure as you could make it.

THE CHAIRMAN: There is another factor involved there, and that is that you wouldn't want such a judge who is appointed and confirmed by the Senate to be subjected to any internal feeling about this thing when his appointment is just coming up. I think this could put him in an embarrassing situation.

MR. O'DONNELL: And undesirable pressures.

MR. HARTNETT: That's why the judges don't like it.

MR. POPPITI: That's right, because if we are going to use the judges we should consider using the boards of canvass. They could also sit as your redistricting committee, but I don't think this is fair to the judiciary. It's a political thing.

THE CHAIRMAN: Redistricting is going to have political overtones no matter what you do.

MR. POPPITI: That's right. Our judges in Delaware, once they are elevated to the bench, stay away from politics, and I think we ought to keep them there.

MR. O'DONNELL: And in some states, such as Maryland, the reapportionment litigation has been in the state courts, and perhaps it should be here, in the first instance.

322 THE CHAIRMAN: That is on motion now, isn't it?

MR. O'DONNELL: No; it hasn't been raised. You mean in Delaware or in Maryland?

THE CHAIRMAN: Has a motion to that effect been made here?

MR. O'DONNELL: No. The Kent County lawyers have talked about it but there is not a motion.

THE CHAIRMAN: I thought there was.

MR. O'DONNELL: At least I haven't noticed it.

MR. POPPITI: Well, can we stop at three? Harold Schmittinger suggests why don't we stop at three: the chairman of each party and the Governor.

MR. O'DONNELL: Each major political party.

MR. POPPITI: Yes.

MR. O'DONNELL: I think it should be phrased in terms of the chairmen of the two parties who had the largest vote in the last general election. That will eliminate the Prohibitionists and other such groups.

MR. POPPITI: What is the feeling around the table?

MR. WILSON: I would think three.

MR. SCHMITTINGER: What would happen, as a practical matter, is that the two chairmen would appoint a subcommittee, probably a committee like this.

MR. POPPITI: Who are the people in our state who
323 are handling these figures? The Department of Elections?

MR. O'DONNELL: The Department of Elections.

MR. POPPITI: Should those people be included?

MR. WILSON: You are talking about population?

MR. POPPITI: We don't have any agency concerned with that, do we?

THE CHAIRMAN: That is a Federal agency.

MR. WILSON: You could make the State Planning Director part of this. The State Planning Director is going to get into this population thing very shortly.

MR. KAVANAUGH: May I ask a question? Do we have in the state some sort of a quasi-permanent type of depart-

ment who assumes permanency yet it is an independent type, state-wide officer?

MR. WILSON: The State Archivist.

MR. HARTNETT: He would die.

MR. O'DONNELL: I think this thing should be equally divided as nearly as possible between the two political parties. Once you swing into offices outside of the political make-up, you don't know what will happen.

MR. HARTNETT: One thing, the one party head can't bring pressure on the other.

MR. KAVANAUGH: Do you think we will have a cabinet form of government by then?

324 MR. O'DONNELL: Not in time.

MR. POPPITI: Actually, we are addressing ourselves to the first step in the reapportionment, because something may well occur to the constitutional convention and that group might come up with an entirely different machinery.

THE CHAIRMAN: This is prong number 1 of the pitchfork.

MR. POPPITI: That's right. We are working only with the immediate future.

MR. WILSON: That's right. Just leave it with three.

MR. POPPITI: I would think with a three-man commission we would be all right.

MR. SCHMITTINGER: I will make that motion, Mr. Chairman, that the Governor and the state chairman of the two parties receiving the largest vote in the last general election constitute the commission.

THE CHAIRMAN: In the last preceding general election.

MR. HARTNETT: For what office?

MR. O'DONNELL: Say for the office of Governor.

THE CHAIRMAN: Yes.

MR. POPPITI: I second the motion.

THE CHAIRMAN: Wait a minute; the last preceding general election might not elect a governor.

MR. HARTNETT: It won't make any difference. The
325 last gubernatorial election, whenever it might be.

MR. KAVANAUGH: This is again just for a statement of principle.

THE CHAIRMAN: Do you accept the "last gubernatorial election"?

MR. SCHMITTINGER: Yes.

THE CHAIRMAN: Is that seconded?

MR. POPPITI: I second the motion.

THE CHAIRMAN: Any further discussion? If not, will all those in favor please signify by raising your right hand? Contrary?

It is unanimous. So ordered.

MR. O'DONNELL: Harold had some language that was rather suitable.

THE CHAIRMAN: Do you want some restrictions?

MR. O'DONNELL: Criteria for the committee.

MR. WILSON: Yes.

MR. SCHMITTINGER: This comes right out of House Bill 361. I'll read it, if you like:

"Reapportionment and redistricting shall be done in accordance with the following criteria:

1. Each district shall be formed of contiguous territory and shall be as compact in area as is possible.

326 "2. Each representative district within a county shall be as nearly equal in population as may be possible."

That says county. I think we would have to change that.

MR. O'DONNELL: Within a district, I would think.

MR. SCHMITTINGER: Yes.

MR. HARTNETT: Yes, within a district, representative district.

THE CHAIRMAN: "As is possible." This might lead to quibbling. How about "reasonably possible"?

MR. SCHMITTINGER: "3. Each district shall follow existing local boundaries in so far as it is possible."

MR. O'DONNELL: Such as streams and rivers.

MR. SCHMITTINGER: "4. Geographical road features or ancient boundaries shall be used to describe the boundaries in so far as possible.

"5. Each representative district shall choose one representative." We have already covered that.

I guess that's about all.

"No political party or person shall be intentionally favored."

MR. O'DONNELL: I wonder about that "as compact as possible." I think if we make it contiguous, and
327 we have these other standards; some people might think of a perfect rectangle as being more compact.

THE CHAIRMAN: The most compact area is a circle.

MR. O'DONNELL: That would be difficult.

THE CHAIRMAN: I say this could lead to quibbling.

MR. O'DONNELL: Why don't we delete that and have the other standards.

MR. HARTNETT: I think when you are only dividing your representative districts, you don't have nearly the problem. You say contiguous, and equal population; that's going to have to be compact.

THE CHAIRMAN: You are saying something about the boundary lines. Do you mean the natural boundary lines?

MR. SCHMITTINGER: This says "each district shall follow existing local boundaries in so far as is possible."

THE CHAIRMAN: Do you mean local boundaries, or natural?

MR. SCHMITTINGER: Then another one here: "Geographical road features or ancient boundaries shall be used to describe boundaries in so far as possible."

MR. O'DONNELL: Why don't we say "natural boundaries, such as streams."

MR. HARTNETT: Yes.

THE CHAIRMAN: This is what you find in the law.
328 Natural boundaries take precedence over surveyors' courses and distances.

MR. O'DONNELL: How about saying "major roads." I have worked on this business of dividing election districts and if you have a good road like Concord Pike, or something, you can stay on one side of it: Major roads, natural boundaries.

MR. WILSON: Do you need in our present thinking, Item 2, "each representative district within a county," which you have changed to a representative district, "shall be as nearly equal in population as may be possible." We have already covered that some place else.

MR. POPPITI: Yes.

MR. HARTNETT: We've got to eliminate 2. Do you think it should be, "Each district shall follow existing natural boundaries, major roads . . ."

THE CHAIRMAN: How about saying "major roads and other natural boundaries." "Major roads, streams, and other natural boundaries."

MR. POPPITI: Because this is the way our hundreds are pretty much set up now.

MR. WILSON: On streams, yes.

MR. HARTNETT: Each district shall follow existing streams, major roads, or other natural boundaries in so far as possible.

329 MR. O'DONNELL: Reverse that and you've got a better sentence. Streams and natural boundaries should be together. Roads, streams and natural boundaries.

MR. HARTNETT: Then you can leave out this one about geographical road features.

MR. O'DONNELL: Maybe we ought to retain that ancient boundaries because the fewer changes we make the better. It makes people know better what district they live in.

Why don't we say, "ancient boundaries, major roads, streams, or other natural boundaries."

MR. HARTNETT: All right.

MR. SCHMITTINGER: That's all right. How is this commission going to certify its redistricting when it redistricts, and when is it going to be compelled to do it? What right is the public going to have to express itself?

MR. KAVANAUGH: The usual thing is 120 days. As I understand it—somebody correct me if I'm wrong—in your Federal census the Bureau of Census must make an official report on or before December 21st of the census year. Or

maybe it's December 1st, I forget which. But there is in the statute, I think, a definite date on which the Bureau of the Census must report to both houses of Congress its findings with respect to the total population.

MR. O'DONNELL: And on that date is there data
330 with respect to election districts?

MR. KAVANAUGH: No. They become available on a report basis, depending on the particular census tracts that are involved.

MR. O'DONNELL: We can't have our committee tied to a date before the data comes through.

MR. WILSON: Here is what it says: "Within 120 days following the official reporting of each decennial census, the board shall submit to the Governor a plan for reapportionment and redistricting as provided in this article. Within 90 days after receipt of the plan, the Governor shall issue a proclamation of reapportionment and redistricting."

MR. O'DONNELL: That's good if that language was tightened up a little bit to show that we were not directing ourselves to the receipt by the Congress of the overall data. But we are talking about the availability, and as Jerry has said it is available later on on a tract basis.

MR. KAVANAUGH: The language covers it, though, because if I remember what you said, Mr. Wilson, it is within 120 days after the official reporting to the President.

MR. HARTNETT: But is it available to us?

MR. WILSON: Within 120 days following the official reporting of each decennial census, the board shall submit to the Governor . . .

331 MR. O'DONNELL: If we should say "reporting of official census for the election districts of Delaware," that would do it, because if it is just this general overall population study to Congress—I don't know; I am not sufficiently familiar with it.

MR. HARTNETT: I think it comes out in census tracts.

MR. O'DONNELL: Representative district is the only breakdown.

MR. KAVANAUGH: And that is not the same as election district.

MR. O'DONNELL: You are right. I am just trying to tie this in.

THE CHAIRMAN: After the official reporting on the present representative districts.

MR. KAVANAUGH: Could we resolve it this way. I am sure in drafting the definitive language for whatever legislative bill is going to be recommended, that somewhere we can find definitive language that ties it down to what we are speaking about in terms of principles.

MR. O'DONNELL: The census people can find out when this representative district data is available.

THE CHAIRMAN: Is officially reported.

MR. POPPITI: Yes, because what we are interested in is that the time element we embody in our statute
332 will give everybody an opportunity to make a report in time to be used at the next general election.

MR. KAVANAUGH: Let me say this. This is strictly off the top of my head, but in 1960 the census was conducted in April and I am sure that the report was dated December 1, 1960, which gave a breakdown for the representative districts. I may be wrong.

MR. HARTNETT: But next time they may change the rules.

MR. O'DONNELL: This is important. It may be available for the election of 1970.

MR. POPPITI: It won't apply then.

MR. WILSON: 1972 will be the first time it will really apply.

MR. KAVANAUGH: We've got two problems. We've got to specify that the immediate figure will take place as soon as possible, as I understand it, in order to accomplish—

MR. HARTNETT: That is no problem because it is available.

MR. KAVANAUGH: I mean parenthetically or some other way it's got to be put in there.

MR. HARTNETT: It's in here: "Within 120 days following the official reporting of each decennial census, or within

120 days after this amendment of this constitution
333 takes effect, the commission shall submit . . ."

MR. POPPITI: If the census is taken in 1970, assuming that we don't get a report until December, obviously the decennial census can't be used for any basis of apportionment in the election of 1970, correct?

MR. WILSON: That's right.

MR. POPPITI: What apparently has been provided here is machinery to insure that within seven months following the receipt of these figures, the reapportionment would take place. This means that assuming the report was available in December, by July the reapportionment process would have taken place and then all of the necessary machinery for changing election districts and so on would have an adequate time to prepare for the 1972 election.

MR. KAVANAUGH: That's right.

MR. O'DONNELL: That is what we want to accomplish. Now we are looking for the phraseology.

MR. WILSON: Right.

MR. POPPITI: Somebody has to verify when this material will be available.

MR. O'DONNELL: That's right.

MR. HARTNETT: We could set a date, like one year following any census. Of course, in Delaware we have a break because we have it every two years. Some states
334 have it every year. We have two whole years.

MR. POPPITI: One way to do it, following your thinking, is to say that by the first day of September following the receipt of the data they shall have done thus and so.

MR. HARTNETT: Right.

MR. POPPITI: But it is always better to direct the commission to convene.

MR. HARTNETT: We can say they shall convene 18 months before the next election.

MR. WILSON: I think this other language is better, 120 days and 90 days.

MR. HARTNETT: I would like the 120 days if I was sure that the data would be available.

MR. HARTNETT: Somebody got this from some place.

MR. KAVANAUGH: The phraseology, "blank days following the official reporting of each decennial census to the President of the United States (or within blank days after the amendment of this constitution takes effect), the commission shall submit . . ." is language common to each of the three bills. House Substitute 1 for House Bill 2; House Bill No. 361, and House Bill 572. I'm sure you will find, if you have the two additional bills, that it is in these bills too.

335 MR. HARTNETT: It is not in 361.

MR. O'DONNELL: These people will have until 1970 to get organized to receive this.

MR. POPPITI: How about if we simply suggest the 120 and 90 days time limitation?

MR. O'DONNELL: That language is satisfactory to me that Jerry has just read. Is that language satisfactory to you, Jerry?

MR. KAVANAUGH: Yes.

MR. O'DONNELL: It is satisfactory to me.

MR. POPPITI: I think that is satisfactory.

MR. HARTNETT: 361 was taken from the Alaska constitution, which is supposed to be the hottest constitution.

MR. KAVANAUGH: In the two blanks could we insert the figures 120 and 90, in that order. I will so move the adoption of the motion.

THE CHAIRMAN: Did we approve these restrictions on the reapportionment committee, that you brought out?

MR. SCHMITTINGER: I think in general they were agreed to.

MR. WILSON: We agreed. I don't know whether we formally approved or not.

MR. POPPITI: Do you want to back up?

MR. O'DONNELL: I move that the language as
336 mentioned by Mr. Schmittinger with respect to the

restrictions on the committee, or guidelines, for the committee, be adopted.

MR. WILSON: I second that.

THE CHAIRMAN: There was one that you eliminated.

MR. O'DONNELL: As amended.

MR. WILSON: Seconded.

THE CHAIRMAN: Any further discussion? Are you ready for the question? All those in favor signify by raising your right hand.

It is unanimous.

Now we come to the question of the time element as to when the reapportionment committee shall act pursuant to the authority which it has.

MR. KAVANAUGH: Why don't I just read the language as it appears in this bill?

MR. HARTNETT: Which bill?

MR. KAVANAUGH: 572. I put this in the form of a motion.

Resolved, that it is the sense of this subcommittee that the legislation on a constitutional amendment contain in principle the following expressed thought, namely, that within 120 calendar days following the official reporting of each decennial census to the President of the United States, or within 120 calendar days after the amend-
337 ment of this constitution takes place, the commission shall submit and file with the secretary of state a plan for reapportionment and redistricting as we have heretofore agreed, and in accordance with the criteria which this subcommittee has established heretofore, and that such plan shall automatically become law 90 calendar days following the beginning of the next regular session of the General Assembly, and shall be effective at the next general election.

MR. WILSON: How do you mean the regular session?

MR. KAVANAUGH: Let me back up. Suppose we just stop it right there at the word "heretofore," and delete "and that such plan shall automatically become law 90 calendar days following the beginning of the next regular session of the General Assembly," etc.

I move the adoption of that resolution.

THE CHAIRMAN: Any further discussion?

MR. SCHMITTINGER: I second that.

THE CHAIRMAN: All in favor signify by raising your right hand. All opposed.

It is unanimous.

MR. KAVANAUGH: The portion that I asked be deleted has to do with the time at which the findings of the commission shall become effective as law.

THE CHAIRMAN: It is filed with the secretary of
338 state when?

MR. KAVANAUGH: Within any number of days—30, 90, whatever you want. Well, it is filed with the secretary of state, period. But the plan then becomes automatic upon the expiration of X calendar days following the beginning of the next regular session of the General Assembly, and shall be effective for the next general election.

In other words, hypothetically, I suppose the way this would work, if you got your official reporting on December 1st of 1970, we have already said 120 days after the official reporting—that is a three-month period—so on the 1st or 2nd of March of 1971 the commission would submit and file with the secretary of state a plan for reapportionment and redistricting.

That plan would automatically, within so many calendar days following the beginning of the next regular session—now our sessions, as I understand it, start the first business day—

MR. O'DONNELL: The first Tuesday after the first Monday.

THE CHAIRMAN: In January.

MR. HARTNETT: Let me interrupt here. This bill here was written with the idea of tying in with the beginning of the legislature becuse it was going to give the legis-
339 lature the right to veto. I don't think we want that.

THE CHAIRMAN: That's right. My point is this. Don't you want in there that as soon as it is filed the

Governor shall proclaim the same and thereupon it shall become law?

MR. POPPITI: Yes.

MR. O'DONNELL: That's where I want to go off the record and ask a question.

THE CHAIRMAN: Yes.

(Discussion off the record.)

340 MR. KAVANAUGH: I think I left off in the middle of explaining the previous language. The deletion was requested for the reason that it injected a principle not compatible with the question of filing the plan. This principle has to do with when the plan as filed by the commission shall take effect, and the mechanics for taking effect.

The discussion on this has been limited in our previous meetings, and I think my view would be that we would need to provide that the Governor by proclamation would establish the effectiveness of any reapportionment and redistricting plan agreed to by a majority of the three-member commission which we have talked about previously, and I think a second element which would involve in principle the right of veto by one or both houses of the General Assembly.

MR. SCHMITTINGER: Where would you be if it was vetoed?

MR. POPPITI: I think you ought to forget about the veto business.

Suppose Brandywine, following our plan, has four representatives. Along comes the 1970 census and instead of their having 60,000, they have 90,000, and the commission, as we contemplate it, recommended they have six representatives, and the Legislative vetoed the plan showing six representatives from the Brandywine Hundred area.

341 You would have a lawsuit on your hands, wouldn't you.

MR. KAVANAUGH: Yes.

THE CHAIRMAN: Gentlemen, I am going to suggest this, that the plan shall be made effective as the constitutional

apportionment of the House for the ensuing dicennial by a proclamation of the Governor within 30 days after the time for filing a judicial review has expired, or within 30 days after a final judgment shall be handed down by the Court having jurisdiction of any such review.

MR. HARTNETT: Would you say the proclamation would be?

THE CHAIRMAN: That the reapportionment plan shall be made effective for the ensuing dicennial by the proclamation of the Governor, which shall be made effective after a 30-day period of judicial review has expired, or 30 days after final judgment shall be handed down by the Court having jurisdiction of such review.

MR. HARTNETT: Wouldn't it be better to have the Governor proclam it within 120 days following the initial reporting, and then it become final after 30 days of the proclamation, or within 30 days of a final decree?

How are you going to appeal from something that is not proclamed? It has to be proclamed before you can appeal.

THE CHAIRMAN: I will accept that.

342 MR. SCHMITTINGER: You are suggesting that we exclude the possibility of the Legislature vetoing the proclamation?

THE CHAIRMAN: Entirely, yes.

All right, let me point out one thing.

Your judicial review is initiated in a Superior Court. There is an appeal to the Supreme Court. What is the time limit on such appeal?

MR. O'DONNELL: 60 days now.

THE CHAIRMAN: There would be 30 days for review, then a period of time for the judgment of the Superior Court, 60 days for the appeal, disposition of the appeal, and 30 days thereafter.

Where are we going?

MR. O'DONNELL: Of course this is a constitutional amendment, and we could make the appeal period shorter in a case of this nature, if we wished.

THE CHAIRMAN: Well, this language, as I conceive it, is in the nature of a statute of limitations, anyway.

MR. E. S. WILSON: The only trouble is, do you have any control over when the judge gives his decision?

THE CHAIRMAN: No.

MR. SCHMITTINGER: In a case of this nature, they would expedite it, I believe.

343 MR. HARTNETT: There is plenty of time. They have a year.

MR. O'DONNELL: The Federal statutes call for such matters to take precedence, and causes the Court to put aside negligence, and divorces, and so forth—not the Federal Court, but it would in our case, if we had such a provision.

MR. E. S. WILSON: But you know as well as I do that the Superior Court takes sometimes a year to get a decision.

THE CHAIRMAN: What would the date of the proclamation be? We tee off from that.

MR. HARTNETT: I don't think the board can proclaim it, or the commissioner.

THE CHAIRMAN: No, the Governor.

The board files the report with the Secretary of State, then the Governor shall proclaim it.

MR. HARTNETT: I would say 30 days.

THE CHAIRMAN: Why not say forthwith, and get it over with?

MR. KAVANAUGH: Do we have a time factor problem of letting the people know?

THE CHAIRMAN: Let's make it forthwith, or within 30 days thereafter, or whatever the limitation period is.

All right, you get a proclamation, and when would
344 it come down if it is forthwith after the filing of the report of the committee?

We anticipated there would be the availability of the Federal census in December, 1970, and then we got into March with 120 days, and then they file their report in March. The Governor proclaims it at once, and we are into 1971.

MR. KAVANAUGH: Yes, the first of April.

THE CHAIRMAN: Then you fix a period of limitation. Perhaps it should be 30 days in order that the people may know of it.

MR. HARTNETT: At least 30 days.

THE CHAIRMAN: All right, that gets you in April. Then it becomes final sometime in April or May of 1971 unless there is a review and an appeal.

So April of 1971 until November of 1972 ought to give sufficient time, if you provide that these reviews and appeals shall take precedence. I am sure the Court would dispose of it promptly.

MR. SCHMITTINGER: Which should be ample time.

THE CHAIRMAN: Yes. I just wanted to be sure of that mathematically.

All right, the proclamation forthwith, to become final within 30 days unless there is a review, in which
345 event it shall become final upon the final judgment upon review.

Suppose the final judgment upon review is, "You have committed certain errors, and the proclamation is set aside, period."

Should it go on farther than that and say what the proclamation should be?

MR. KAVANAUGH: No. I think then we are back to where we are now. The relief would be whether or not the apportionment as it existed immediately prior to the finding of the proclamation would meet the constitutional standards and tests which we hope will be enunciated some day.

THE CHAIRMAN: I am not thinking of that. I am thinking of this: We have laid down certain standards to be followed by the commission. The Governor's proclamation follows the commission's report. Suppose the Court finds they have not followed the standards set forth in our own constitution for reapportionment, and they set it aside.

Then do you get into this problem of the Governor having to issue another proclamation pursuant to the judgment of the Court? Or shall we anticipate that the judgment of the Court shall declare the truth of the matter?

MR. O'DONNELL: No, based upon the decisions, so far, I do not think we can assume that.

346 THE CHAIRMAN: I think your apportionment commission would have to go back and get to work on this in the light of the review.

MR. KAVANAUGH: Shouldn't we think in terms that if the Court finds the commission in error in the report or plan that it has filed, then the Court would have in its authority to correct such error as found by reason of the commission's not applying the standards?

MR. O'DONNELL: The Court would not want that, and I do not think we do, either.

I think if the commission has come up with an inequitable plan, the Court will direct them to create a new plan. If they don't do it by—

MR. HARTNETT: This is by mandamus, anyway, so they would be ordered to bring up a new plan.

MR. O'DONNELL: I think they would order that a master do it, such as has been done in many cases.

THE CHAIRMAN: Then you would not need another proclamation. This proclamation is voided, and the Court tells you why it is voided, then the Court tells you what to do.

MR. KAVANAUGH: Is it voided if your proclamation is so worded that the plan shall take effect within 30 days provided there has not been a final determination by a

347 superior court mandamus proceeding, and final judgment upon any review?

MR. O'DONNELL: Well, it is void one way or the other. If the Court says it is void, it is either void because it never was, or void because the Court says it is.

THE CHAIRMAN: We have to check on gerrymandering. Suppose the Court finds an ink spot in this representative district, under gerrymandering, and so they say, "No, that

does not meet the standards under this gerrymandering, therefore it is void."

Does the Court go on and say, "You shall do it this way: You shall redistrict it down Concord Pike, and out here, and so forth"?

This would put the Court right back in it.

MR. HARTNETT: They might have to, or might say, "Go back to the commission and do it over again."

THE CHAIRMAN: All right, so the commission goes back and does it over again. Having done it over again, when does that redoing become law?

MR. HARTNETT: I would say by the terms of the mandamus, I think the Court would have to make it effective.

MR. O'DONNELL: I think you are right, if the Court takes that route. But I would think the Court would take another route, at least the first time. It would if I were on the Court.

348 I would order the commission to do it and do it directly. And if that is the case, then we do not want the language about when the executive order shall be entered to be too restrictive.

THE CHAIRMAN: No, certainly not.

MR. O'DONNELL: It certainly seems to me if the Court orders them to do it over again, and they do it over again, the Governor should issue another order.

I don't think we have to tell him to, because it is implicit. But if we have to tell him to do it over again, I would not object to it.

MR. HARTNETT: Don't you think if the situation arose, the Court would probably decide and tell the commission to come up with it, and issue a new proclamation?

MR. O'DONNELL: I would certainly think so. The government would be a defendant there.

THE CHAIRMAN: Isn't this what would happen in a mandamus?

Does your right of mandamus require a return, in the sense that, "You are hereby compelled now to do such

and such a thing within such and such a time," and doesn't the official have to make a return to the Court and say, "I have done this," and then the Court on motion review what they have done, to see if they have complied
349 with the order?

MR. O'DONNELL: Yes.

THE CHAIRMAN: So it would automatically become effective when the commission and Governor have made a final return which meets the requirements of the court.

Do you think we have to spell that out?

MR. O'DONNELL: I don't think so.

MR. HARTNETT: I don't, either.

THE CHAIRMAN: In effect, wouldn't the court say, "You are hereby directed to revise and amend your report, and the proclamation of the Governor made pursuant thereto, in the following respects and make report back to the court," within a specified time, and then that would be reviewed on motion and in effect you have then an amended proclamation?

MR. POPPITI: Of course when you are in the field of mandamus it would have to be something so clear and ministerial it should have done it in the first instance.

MR. SCHMITTINGER: I cannot conceive of any Delaware governor abusing this discretion.

THE CHAIRMAN: It would have to be a clear case of abuse.

MR. O'DONNELL: Well, it should be. It is not a judicial function. They should not get into it unless it is a
350 matter that is not debatable.

MR. HARTNETT: If we want the court to do it, we tell them in the first place.

MR. O'DONNELL: Yes, it should be a pure case of abuse of discretion on the part of the commission.

THE CHAIRMAN: I think under the writ of mandamus and the judgment of the court it would take care of itself.

MR. SCHMITTINGER: You mean the abuse would not happen in the first place?

THE CHAIRMAN: No. Once they found abuse, they would so declare it and order that the report and proclamation be amended or revised, and that would have to be done, and a report made by the commission and the governor to the court. Once the court approves the return, that is final.

Perhaps some language would be appropriate that to become final within—

MR. POPPITI: 30 days after publication of said proclamation in a newspaper in general circulation in the State of Delaware.

I think you have to start from somewhere where everybody gets notice. Why can't we say that?

THE CHAIRMAN: It becomes final then, or upon the final judgment of the court?

351 MR. POPPITI: Would you leave that implicit, and merely say, in view of our discussion, that the reapportionment commission shall file its report with the Secretary of State, whereupon, the Governor shall proclaim the plan as adopted by a majority of the reapportionment commission, and said proclamation shall be published in a newspaper of general circulation in the State of Delaware, and 30 days thereafter the plan shall become effective.

If you stop there, obviously if there is a court review this would arrest the implementation of the proclamation.

Why don't we leave it at that point?

THE CHAIRMAN: In other words, it would be implicit by merely providing for judicial review?

MR. POPPITI: That is right, yes.

THE CHAIRMAN: Are all lawyers agreed that it is implied?

MR. O'DONNELL: I am.

MR. KAVANAUGH: Yes.

MR. O'DONNELL: I think the value of what we are doing now is in the limitations provision. Because I think everything else is of right by virtue of the United States Supreme Court's acts, and the real value to the people of

Delaware would be a prompt decision. We would
352 not have litigation the day before filing, such as we have now. This will clear the air one way or the other within a reasonable time prior to the election.

MR. POPPITI: And realistically all of this will not be going on in a vacuum. The results of a census will be known to the people interested in the various hundreds, and they will certainly know that the population has gone up.

This thing, I think, would be a subject of constant discussion. So when the proclamation is issued there ought to be some date after which the thing should become effective if no action is taken.

THE CHAIRMAN: Then do I hear a motion that the effectiveness of the report of the constitutional apportionment commission will be by proclamation of the Governor, which shall become final within 30 days after it has been published in a newspaper of general circulation, and that the right of judicial review by mandamus or other appropriate remedy shall be limited to such 30-day period?

MR. POPPITI: I so move, Mr. Chairman.

MR. CHAIRMAN: By that you understand, gentlemen, I mean the commencement of the action.

MR. E. S. WILSON: Second.

MR. O'DONNELL: Second.

353 THE CHAIRMAN: All right, are you ready for the question?

All those in favor signify by raising the right hand.

Contrary?

It is unanimous.

MR. E. S. WILSON: Off the record.

(Discussion off the record.)

MR. KAVANAUGH: Before we leave the constitutional amendment I would like to ask a question.

Are we satisfied that we have covered all the things we might want to include in the constitutional amendment? Are there any other safeguards that we may want to impose?

MR. HARTNETT: I think some people misunderstood what I meant last time when I said I thought there ought to be some provision for setting a maximum limitation upon the members of the House.

I did not mean by that the present method of apportionment would be affected by the maximum, that is, that New Castle County would be limited to a certain number of members under the system.

What I meant to say was that I think a maximum of the House of Representatives ought to be set, and when that figure is reached there should be a provision
354 that there would have to be reapportionment at that time—complete reapportionment.

I think eventually the House may become so large that we are going to have to combine these small districts and reduce the total number of districts.

MR. E. S. WILSON: Why don't we cross that bridge when we come to it?

MR. HARTNETT: Well, the only danger is that at that time the members of the House, in my opinion, would not look with favor upon reducing their size, because it would be reducing their own membership.

In other words, I would set a limitation on this plan, but I am not going to strongly argue it here. I am just going to point out some other people have mentioned it to me.

THE CHAIRMAN: Then we would have to put in this constitutional amendment another elaborate section as to what should occur when that day arrives.

MR. HARTNETT: That is true.

THE CHAIRMAN: I would rather leave that to another day.

MR. KAVANAUGH: May I rephrase that to "another generation"?

May I ask, too, in respect to what we have just done in connection with enunciating a principle that the
355 reapportionment plan shall be filed within 120 days, it is my understanding, and I certainly hope you all agree, that this is a mandatory provision insofar as the

commission which we have talked about is concerned, and is not merely a permissive thing.

MR. O'DONNELL: Oh, no, it has to be.

THE CHAIRMAN: I think this is as close to being automatic as we can do, and that is what we are shooting for. There will be no quibbling at the bar.

MR. HARTNETT: I do not know if this language of Alaska will be used, but it says in there, if they do not act within 120 days, then they will compel it to act.

MR. KAVANAUGH: I was not sure if in our discussion this was considered.

MR. HARTNETT: As a matter of fact, it was not.

MR. KAVANAUGH: I knew we considered the fact that they shall file a plan within a certain time.

THE CHAIRMAN: Do you move that provision be incorporated within the plan?

MR. HARTNETT: I move that in the event the reapportionment commission does not act within the 120 days as provided in the constitution, a 30-day period for the bringing of a mandamus action to compel it to act be
356 included in the constitutional amendment.

MR. KAVANAUGH: Second.

THE CHAIRMAN: All right, all those in favor?

(Unanimously carried)

THE CHAIRMAN: All right, gentlemen, I certainly want to congratulate this committee at this stage. I feel extremely well pleased with the progress we have made.

Off the record.

(Discussion off the record.)

THE CHAIRMAN: Have I called on each member of the committee here to express his initial views of a constitutional convention?

MR. POPPITI: I think we have done that.

MR. HARTNETT: I think we have beaten it to death, and nobody has changed his mind.

THE CHAIRMAN: All right, let's get into the meat of it.

I have only one thing to add to that, and it is this: I have had occasion to mention to the Governor in one conversation a provision for a constitutional amendment which would shorten the time for the election of delegates and the convening of a constitutional convention. It was his
suggestion that I discuss this with Judge Herrmann,
357 who I understand has on occasion been called upon to advise the Governor on legal matters.

This I did. He had his office staff make as quick a study as they could, and he now feels that if step number one, which is the calling of the constitutional convention, transpires at this ensuing election, and if there is a constitutional amendment which would provide for the shortening of the time when that constitutional convention should be convened, that this would not affect the constitutionality of such a convention, even though the call and the voting on the call had taken place before the amendment became effective.

He did suggest, however, that in the legislative act which provides for the call, it provides in substance that in addition to the formal words of the call there be spelled out in some detail that such a constitutional amendment is under legislative advisement, and that the voters who vote for it would clearly understand that having voted for the call it would be possible that the shortening provisions would be effective with regard to the constitutional convention on which he calls. So that no voter could say that he did not clearly understand this was in the making at the time he voted for the call.

I think that about states his feeling on the thing.

358 MR. HARTNETT: While sitting here I am wondering if before we go on to the constitutional convention we should have a motion that we consolidate all of the parts we have hammered out here.

Do you think we ought to have a motion to do so?

MR. E. S. WILSON: Well, isn't the constitutional convention a part of it?

MR. HARTNETT: I don't know. Is it?

MR. E. S. WILSON: Yes.

THE CHAIRMAN: My present thinking is that I agree with Mr. Wilson, our reservation is as to the entire report.

One other thought was expressed by Judge Herrmann, that the present constitutional provision, if anybody has it here, merely provides for the legislature to implement the election of delegates.

MR. HARTNETT: I don't think you can implement it until after the election.

THE CHAIRMAN: I mean the election of delegates.

MR. HARTNETT: I don't think that can be done until after the referendum.

THE CHAIRMAN: That is right. Not until after. But he suggested that this is rather vague and uncertain as to how they shall go about implementing it, particularly
359 with respect to the matter of the nomination of candidates, that is, for delegates.

He thought that possibly that should be clarified, because one of his law clerks had been doing some research into this in connection with a law journal article that was being written by some professor of some law school, and similar provisions seem to indicate that possibly the legislature itself would be able to pass upon who would be candidates for the office of delegate to the constitutional convention.

MR. O'DONNELL: You have lost me. These suggestions relate to an amendment of our constitution that might be taken up either by the legislature or a two-legged amendment, or a constitutional—

THE CHAIRMAN: No. This would be by another two-legged amendment.

MR. O'DONNELL: But why is that coming before us?

THE CHAIRMAN: The only way I can see that would come before us is in this manner: That if we are proceeding with a pitchfork that has two prongs, and we are doing this in order to persuade the court that Delaware is moving

forward in the utmost good faith, and we feel this is essential for purposes of evidencing our good faith, then the court may well say, "Well, this is no particular
360 evidence of good faith, because this does not transpire until September of 1965, which is a long day away."

So it may be that in order to avoid that criticism by the court we should suggest a further two-legged constitutional amendment to shorten the time. Because let's assume that the court should say the plan we have come up with on the first prong of the fork is not constitutional. There is nothing that the State would then be doing to show that it is ready to take a further step in good faith. And if we say, all right, we will put the simple question: "Shall there be a constitutional convention to revise the constitutional amendment?" And they would say, "That is not sufficient, in view of the fact that your first step was hopelessly inadequate, because this will not take place until 1965, and today is the day," and so judiciously decrees it. In light of that, this is where the thing comes up.

MR. O'DONNELL: I follow you. May I go off the record?

THE CHAIRMAN: Yes.

(Discussion off the record.)

THE CHAIRMAN: Isn't the question now shall we vote for or against a constitutional convention, either with or without a proviso for the shortening of the time
361 of the delegate election and the convening of the convention?

MR. O'DONNELL: My recommendation would be let's do it in two steps. Let's go for the constitution without burdening it with the shortening process, and see where we get on that. Some people might object to the shortening without objecting to the convention.

MR. HARTNETT: Or vice versa.

MR. E. S. WILSON: Make your motion.

MR. POPPITI: I will move that this committee recommend

to the main committee that the question of the constitutional convention be placed on the ballot this fall, and that the constitutional convention be called pursuant to the provisions of the State constitution, and that the number of delegates spelled out in the constitution, as it presently exists, shall be the number of delegates for the constitutional convention.

THE CHAIRMAN: And the apportionment thereof.

MR. POPPITI: And the apportionment thereof.

MR. SCHMITTINGER: Do I understand by that motion, Mike, that you are urging a bill for the convention first, before this constitutional amendment?

MR. O'DONNELL: Simultaneously.

MR. POPPITI: Simultaneously.

MR. SCHMITTINGER: Oh, you mean two separate bills?

362 MR. POPPITI: Yes, they would have to be.

MR. O'DONNELL: We are urging them at the same time.

THE CHAIRMAN: Yes, simultaneously.

MR. SCHMITTINGER: As I said before, I think the convention is going to cost votes and maybe even lose the amendment.

MR. O'DONNELL: Would you accept this amendment, that this committee recommends that the vote of the constitutional amendment be brought up in the Houses of the General Assembly after the vote on the amendment. Would that take care of your fears?

MR. SCHMITTINGER: I would think we ought to vote on the amendment first.

THE CHAIRMAN: That's what he is saying.

MR. O'DONNELL: Would you accept that as an amendment, Mike?

MR. POPPITI: Sure.

MR. O'DONNELL: I will second his motion.

MR. KAVANAUGH: Is this a motion to amend?

MR. POPPITI: No, as amended.

MR. O'DONNELL: We never had a vote on his amendment.

MR. KAVANAUGH: His motion hasn't been seconded yet.

MR. O'DONNELL: I second it.

363 THE CHAIRMAN: And he has accepted the amendment.

MR. KAVANAUGH: Could somebody tell me what we have on the floor?

MR. POPPITI: I will repeat the motion: That we call a constitutional convention with 41 delegates with the apportionment as it now exists in our constitution. However, the bill to call a constitutional convention shall be submitted for consideration by both Houses of the Legislature after they have considered the amendment to the constitution setting up the plan of reapportionment that we adopted prior to this.

THE CHAIRMAN: Substitute the words "shall be acted on" after they have acted on, instead of "considered."

MR. POPPITI: All right, after they have taken final action on the constitutional amendment.

MR. KAVANAUGH: Now discussion. Could I understand the niceties of that distinction, the difference between "acted" and "considered". Which is it now?

THE CHAIRMAN: Well, one is that you may consider it and take no action; the other is that the action on this recommendation of the committee shall take place in the General Assembly after they have acted upon our proposed two-pronged constitutional amendment.

MR. POPPITI: I gather the feeling around the table
364 is we don't want to give them a choice.

THE CHAIRMAN: Right.

MR. POPPITI: And I gather that the feeling is we want to get definitive action on the constitutional amendment first.

THE CHAIRMAN: Right.

MR. O'DONNELL: That is right.

THE CHAIRMAN: And then, and only then, shall they act on this proposal.

MR. POPPITI: Coming back to what we said earlier this afternoon, that it is possible that we may only get part of this job done in the legislature.

MR. KAVANAUGH: Now, for clarification, may I understand that it is the sense of this group that we will recommend unanimously to the Governor's full committee of 32 that it is the sense of this committee that there be simultaneous consideration by the legislature of both the constitutional amendment and the constitutional convention?

THE CHAIRMAN: They can consider them together but they have to act on No. 1 before they can act on No. 2.

MR. KAVANAUGH: Is this the sense of everybody now, Harold?

MR. SCHMITTINGER: They have to act on the 365 amendment first.

THE CHAIRMAN: They can consider them together if they want to.

MR. O'DONNELL: We can't regulate how they can consider them.

MR. HARTNETT: We can only recommend.

MR. KAVANAUGH: I just want to be sure that this subcommittee's report will recommend concurrently the consideration of a constitutional amendment and a constitutional convention. That is all I am concerned about, because I say it is presumptuous of this subcommittee to second guess, or prejudge, what the parent group is going to do, and then leap over that and try to guess what the legislature is going to do.

I am satisfied if this group can be of record unanimously that it believes in a concurrent recommendation on these two principles.

THE CHAIRMAN: I think that the consensus of this motion is this, that we recommend that the General Assembly consider both the constitutional amendment for reapportionment of the General Assembly pursuant to a

plan which we have drawn, and that they also consider the calling of a constitutional convention at the same time, but that they shall act upon the constitutional amend-
366 ment for the reapportionment of the legislature before they shall take action upon the call of the constitutional convention.

MR. POPPITI: Now, can we go off the record a minute?

THE CHAIRMAN: Yes.

(Discussion off the record)

MR. SCHMITTINGER: I think we are ready to vote on that. I call for the question.

THE CHAIRMAN: It has been moved and seconded. Are you ready for the question? All those in favor signify by raising your right hand. Those contrary?

It is unanimous.

MR. O'DONNELL: To move things, are we now ready for a reconsideration of the whole report?

THE CHAIRMAN: One thing further. Shall we propose a resolution that there be a second constitutional amendment providing for the shortening of the holding of the constitutional convention, and that Judge Herrmann's office be asked to draft it?

MR. O'DONNELL: I was thinking of that. Why isn't that just a request that the Chair can make, so that we can all see that, without making it a big resolution?

THE CHAIRMAN: When can we see it?

MR. O'DONNELL: I don't see how we can see it
367 before Monday night.

THE CHAIRMAN: The only reason that I press this is because I want the court itself to gather from our report, if it is ever brought to their attention, that this is the first step in the Delaware process of good faith to show that we are not dragging our feet by having a constitutional convention take place way up in 1965, but that this committee feels that there should be a shortening of the time.

MR. HARTNETT: Suppose it doesn't pan out, though?

THE CHAIRMAN: Very well, then the legislature is the one.

MR. KAVANAUGH: The risk of jeopardizing the constitutional amendment is necessarily inherent in anything else you do. But I am tremendously impressed by this concept, in order to impress the public and the court as to the sincerety and the statesmanship of this group, that we are of a mind that if it can be done and done properly, that it be so ordered.

THE CHAIRMAN: In other words, here is the situation. Let us just suppose, for example, that the General Assembly refuses to go for our constitutional amendment on reapportionment but says we will go for this because we feel that this is a matter of public moment and the public should get at it just as soon as possible. And
368 if the legislature shortens the time by the constitutional amendment, perhaps that will be persuasive to the court.

MR. POPPITI: And I think we ought to explore the question too because presumably if they will go for the question of the constitutional convention, if they are interested, then presumably they would be interested in getting to it as soon as possible.

THE CHAIRMAN: Now, instead of 1965.

MR. POPPITI: Right.

MR. HARTNETT: But you are asking us to vote on a constitutional amendment which we have not seen. Suppose this boy brings up something that is totally unacceptable to the committee? Then it will look worse to the court.

MR. O'DONNELL: Let's separate the boy and the principle. I am trying to draft one on the principle now, and I think asking the boy for his thoughts in forming a draft is something we ought not to get into.

What is the Article?

MR. KAVANAUGH: Article XVI, Section 2.

(Discussion off the record.)

MR. O'DONNELL: I suggest this:

Resolved that this committee believes that Article XVI,
Section 2, of the constitution of the State of Dela-
369 ware should be amended, if possible, to reduce the
time between a referendum calling for a constitu-
tional convention and the actual convening thereof.

THE CHAIRMAN: Let's see if we can make that a little bit stronger. To reduce the time to the shortest reasonably possible period.

MR. SCHMITTINGER: I wonder if it is wise to have such a provision in your constitution?

MR. KAVANAUGH: This is just an expression of the sense of this group.

THE CHAIRMAN: What we are saying is that once the people have said we want a constitutional convention, then we say they should have it within the shortest possible time. They have made up their mind.

MR. KAVANAUGH: This may not be built into the new constitution. We are taking advantage of what we see in the constitution as it is presently written, which is permissible.

THE CHAIRMAN: I can see some reason for the way it was written in 1897, where lines of communication were indefinite and uncertain, the play of one man's mind against another was slow, and so forth. But in this modern day, once people have said we want a constitutional convention, they should have it.

MR. O'DONNELL: I just added to what I said, "To
370 reduce the time between a referendum calling for
a constitutional convention and the actual convening
thereof to the shortest possible time."

THE CHAIRMAN: Shortest practical time.

MR. O'DONNELL: Shortest practical time.

MR. KAVANAUGH: You can say the shortest practicable time consistent with the present provisions of the constitution.

I will second that motion.

THE CHAIRMAN: Any discussion, gentlemen? Are you ready for the question? If so, all those in favor signify by raising the right hand. Contrary? So ordered.

It is unanimous.

Gentlemen, you now have the proposed substance of the report before you.

MR. O'DONNELL: Excuse me. We are not squared away about the consideration of the whole.

THE CHAIRMAN: That is what I say. You now have the substance of the tentative report before you. Shall this be the final report, in substance? Will somebody move that it may be?

MR. E. S. WILSON: I would like to make this one comment. Our task has been to provide a plan of action on reapportionment that would satisfy the recent action
371 before the Federal court, and performable by our legislative body. I endorse the plan as a compromise. It is a step in the right direction but it is not true reapportionment. It raises the voting rights of many of our full taxpaying citizens from 1/35th of a vote to 1/14th of a vote. It raise from 18 to 28% the fraction of the voters to control the House, which is based on population. It is step in the right direction.

THE CHAIRMAN: Any other comments, gentlemen?

MR. O'DONNELL: Yes. Off the record.

THE CHAIRMAN: Off the record.

(Discussion off the record)

MR. HARTNETT: My comment is that although I have opposed and still do oppose the idea of recommending a constitutional convention, I, in the spirit of compromise, intend to vote for the entire plan.

THE CHAIRMAN: Report.

MR. O'DONNELL: I would like to say for the record too that I do not believe that this is the best possible plan that we might have adopted, but I believe that under the circumstances it is a good plan and should be adopted.

MR. HARTNETT: I would like to say that I do, however, think that the plan for reapportionment is a good plan.

MR. POPPITI: I think I have made my position
372 known from the outset, that I suggest that we go into this with a spirit of bipartisanship, that we recognize the problem, and in recognizing the problem we should recognize what goals can be attained.

I think that what we have worked out here is within the spirit of the opening remarks which I made, even though I recognize, like Mr. Wilson and Mr. O'Donnell, and I am sure all of us around the table, that we have not achieved the ideal. But at least it is a step in the right direction and I think that succeeding groups who may have to consider this question will go in the direction of ameliorating the situation and getting closer to the ideal.

MR. SCHMITTINGER: Mr. Chairman, I would like to state that I intend to vote for the entire report because I believe the interests of the whole State of Delaware have been adequately represented and protected in these proceedings. And I further believe that the reapportionment amendment is a reasonable one, and in my judgment, and I hope in Mr. O'Donnell's judgment, it will give him the necessary basis for defending this suit that was brought in Federal court.

MR. KAVANAUGH: For the record, I am going to vote for the report of the deliberations of this subcommittee in its entirety, and the conclusions which we have reached
373 as a deliberative body.

I know that I have not seen all that I would have liked to have been included in a formal report to the Governor's committee, but I feel that the work that this group has done is so permeated with a spirit of sincerity, conscientious endeavor, and statesmanship that not to vote for it would do a disservice to my fellow subcommittee members and to the Governor's committee.

I endorse the report, and I urge and appeal to each and every member of the Governor's committee to attend

to his responsibilities or the parent group with the same degree of sincerity and statesmanship that has infected this entire body.

THE CHAIRMAN: Senator Johnson.

MR. JOHNSON: I intend to vote for the recommendations of the committee in its entirety, and I believe that these recommendations are worthy of the consideration and support of every member of the General Assembly. It indicates more progress than we have made on this question over a period of many years.

THE CHAIRMAN: Gentlemen, at the outset we conceived our problem to be that of coming up with a plan which was rational, which was not invidiously discriminatory. At the outset it was our responsibility to take the first step to evidence to the District Court of the State of Dela-
374 ware that this State is ready to go forward in all good faith towards evolving and promulgating and making effective such a plan.

It was also our responsibility to devise a plan which we believe in our combined opinions would be acceptable to the State as a whole, although not necessarily to each separate segment of the State. By the State I mean as it speaks through its representatives in the General Assembly.

I sincerely believe that in the historic spirit of compromise, which is one of the fundamental principles of a Republican form of government, we have evolved such a plan as a result of our deliberations.

I want to thank all of you for the statesmanlike spirit in which you have, each and every one, approached this problem and have come forth with this report. I shall not only vote in favor of the plan but I shall commend it to the parent body, and if called upon I will commend it to the General Assembly.

Is there any further discussion?

If not, all those in favor of the report signify by raising your right hand.

It is unanimous.

For the record, will somebody make a motion that we recess until Monday night at 7 o'clock, to reconvene at the office of the Governor?

MR. KAVANAUGH: Do I have the Chair's permission to absent myself from that meeting because of the pressure of other business?

THE CHAIRMAN: Yes.

MR. POPPITI: I so move.

MR. E. S. WILSON: Second it.

THE CHAIRMAN: All in favor signify by saying aye.

So ordered.

(Whereupon, at 10:35 p.m., the meeting was adjourned.)